

PUBLIC EMPLOYMENT RELATIONS BOARD



Headquarters Office
1031 18th Street
Sacramento, CA 95814-4174
(916) 322-3198



PERB Decision No. HO-U-680-H

May 22, 1998

RE: California State Employees Association, SEIU Local 1000 v.
Trustees of the California State University; Academic
Professionals of California
Case No. LA-CE-370-H

No exceptions have been filed in the above-referenced matter pursuant to California Code of Regulations, title 8, section 32300. As provided in section 32305, the proposed decision of the Board agent is HEREBY DECLARED FINAL, effective May 22, 1998.

This decision is binding on the parties to this case. However, since the decision was not expressly adopted by the Board itself, it may not be cited in other cases as precedent.

Public Employment Relations Board
by

A handwritten signature in cursive script, reading "Teresa M. Stewart", is written over the typed name.
Teresa M. Stewart
Appeals Assistant



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA STATE EMPLOYEES)	
ASSOCIATION, SEIU LOCAL 1000)	
)	
Charging Party,)	
)	Unfair Practice
v.)	Case No. LA-CE-370-H
)	
TRUSTEES OF THE CALIFORNIA)	PROPOSED DECISION
STATE UNIVERSITY,)	(4/22/98)
)	
Respondent.)	
)	
ACADEMIC PROFESSIONALS OF)	
CALIFORNIA,)	
)	
Interested Party,)	
)	
)	

Appearances: Howard Schwartz, Special Legal Counsel, and Taven Laxer, Senior Labor Relations Representative, for California State Employees Association, SEIU Local 1000; William Knight and Carlos Cordova, University Counsel, for Trustees of the California State University; Rothner, Segall, Bahan and Greenstone by Glenn Rothner, Attorney, for Academic Professionals of California.

Before Fred D'Orazio, Administrative Law Judge.

PROCEDURAL HISTORY

The California State Employees Association, SEIU Local 1000 (CSEA), commenced this action on June 7, 1993, by filing an unfair practice charge against the Trustees of the California State University (CSU). On July 3, 1996, after a period of abeyance during which the charge was amended, the Office of General Counsel of the Public Employment Relations Board (PERB or Board) issued a complaint.¹ As amended by order of the

¹On July 3, 1996, by order of the regional attorney, the Academic Professionals of California (APC) joined the instant proceeding as a party with a substantial interest in the issues presented. (Cal. Code Regs., tit. 8, sec. 32164(c).)

undersigned administrative law judge (ALJ) on October 23, 1996, the complaint alleges that CSU, on six campuses, unlawfully dealt with and consulted with an employee organization that does not hold exclusive representative status.² This conduct, the complaint alleges, violated the Higher Education Employer-Employee Relations Act (HEERA) section 3571(d), (f), (a), (b) and (c).³

²CSEA first alleged that the allegedly unlawful conduct occurred on CSU campuses at San Luis Obispo, Pomona, Long Beach, Sonoma, Dominguez Hills, San Diego, Hayward, and San Marcos. Subsequently, allegations concerning conduct on the San Diego, Hayward, and San Marcos campuses were withdrawn.

³HEERA is codified at Government Code section 3560 et seq. Unless otherwise indicated, all statutory references are to the Government Code. Section 3571 states in relevant part:

It shall be unlawful for the higher education employer to do any of the following:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to engage in meeting and conferring with an exclusive representative.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another. However, subject to rules and regulations adopted by the board pursuant to Section 3563, an employer shall not be prohibited from permitting employees to engage in meeting and conferring or consulting during working hours without loss

CSU answered all allegations in a timely manner, generally denying any wrongdoing and asserting a number of affirmative defenses. Denials and defenses will be addressed below, as necessary.

Two informal conferences were conducted by a PERB ALJ but the dispute was not resolved.

The undersigned ALJ conducted a formal hearing covering the Sonoma and San Luis Obispo campuses on eleven days between November 18, 1996, and April 10, 1997, in San Luis Obispo. With the receipt of the final brief on September 16, 1997, the case was submitted for proposed decision.

During the hearing it became apparent that the legal issues presented here were similar if not identical on every campus. This raised the possibility that the ultimate resolution of this dispute could be accomplished without the need to receive evidence about conduct on each campus covered by the complaint. At the initiation of the undersigned ALJ, severing one or more campuses from the instant hearing was discussed with the parties on several occasions and their written views solicited and considered. On January 15, 1997, in the interest of judicial

of pay or benefits.

(f) Consult with any academic, professional, or staff advisory group on any matter within the scope of representation for employees who are represented by an exclusive representative, . . . This subdivision is not intended to diminish the prohibition of unfair practices contained in subdivision (d).

economy, the undersigned granted CSEA's motion to limit the hearing to allegations concerning the Sonoma and San Luis Obispo campuses.⁴ By letter dated April 16, 1997, the undersigned also informed the parties that allegations concerning conduct at the Pomona, Long Beach, and Dominguez Hills campuses were severed from the instant case, assigned a new case number, and placed in abeyance pending the outcome of the instant dispute.⁵

FINDINGS OF FACT

Jurisdiction

CSU is a higher education employer within the meaning of section 3562(h). CSEA is an employee organization within the meaning of section 3562(g), and the exclusive representative of bargaining units 2 (health care support), 5 (operations support services), 7 (clerical/administrative support services), and 9 (technical support services) within the meaning of section 3562(j). APC is an employee organization within the meaning of section 3562(g), and the exclusive representative of bargaining unit 4 within the meaning of section 3562(j).

Background

Prior to the enactment of HEERA in 1979, it was customary for CSU to include a statewide staff council and local staff

⁴(See Reporter's Transcript, Vol. IV, pp. 8-14.) Hereafter, citations to the Reporter's Transcript will be referred to as "R.T." Joint exhibits will be referred to as "Jt. Ex." Exhibits introduced by CSEA and CSU will be referred to as "CP Ex." and "Res. Ex.", respectively.

⁵The new case is California State Employees Association, SEIU Local 1000 v. Trustees of the California State University, LA-CE-475-H.

councils when dealing with policies and procedures that effect staff employees. With the enactment of HEERA, Vice Chancellor of Faculty and Staff Affairs Marjorie Downing Wagner (Wagner) informed campus presidents that the statewide council would be dissolved. Staff Councils would no longer be permitted to consult with CSU on behalf of employees about matters within scope of representation after the filing of requests for recognition or certification of employee organizations as exclusive representatives. Wagner explained the CSU position as follows:

Other roles for staff members may continue to exist as long as these members do not purport to represent the staff, and are not elected or nominated to various bodies by any group purporting to represent staff. If it is adjudged that the perspective of staff members is desired on matters not restricted by law, such as search and job screening, or commencement procedures and the like, staff members may be appointed to appropriate advisory groups by the President or his or her designee. Similarly, staff persons who serve by campus custom on academic senates may continue to serve by appointment. (Underlining in original.)

More than a decade passed before a resurgence of staff council activity took place.

In reviewing the proper role of staff councils under HEERA, CSU Director of Employee Relations Samuel Strafaci (Strafaci), in a November 14, 1991, memo to employee relations personnel, reiterated that staff councils do not have the right to negotiate about mandatory subjects of bargaining. "While meeting with staff councils or other employee groups may be useful," Strafaci

wrote, "and these groups may certainly include [negotiable topics] on their agenda for discussion, they are precluded from negotiating with CSU campus administrators in an attempt to change such policies or to administer the collective bargaining agreement." It was under this general directive that staff councils on the various campuses renewed operations.

California Polytechnic State University

Establishment of the Staff Council

In November 1991, California Polytechnic State University, San Luis Obispo (Cal Poly), President Warren Baker (Baker) announced the formation of the Ad Hoc Staff Task Force (Task Force), which had a dual purpose: (1) review and comment on the Strategic Planning Document⁶ (SPD) and (2) recommend a permanent structure for providing staff input on issues not covered by collective bargaining agreements.⁷

The Task Force was made up of 15 appointees of President Baker. No CSEA representative was appointed to the Task Force. Staff Personnel Officer Robert Negranti (Negranti) served as liaison to the Task Force. He was assisted by Jan Pieper (Pieper), director of personnel, and Frank Lebens (Lebens), then

⁶In brief, the SPD analyzes Cal Poly's future in areas such as overall mission, academic programs, faculty scholarship, staff professional growth and achievement, student satisfaction, diversity, and governance and collegiality.

⁷The initial unfair practice charge in this case was filed on June 7, 1993. Thus, violations stemming from events that occurred outside the six-month statute of limitations period, or prior to December 7, 1992, are time-barred. (Section 3563.2(a).) A brief summary of events that took place before the limitations period is provided here for background purposes only.

vice president for administration and finance. Comments concerning the SPD were channeled to President Baker through Vice President of Academic Affairs Robert Koob (Koob).

Ellen Stier (Stier), an administrative assistant in the computer science department, and Eileen Anderson (Anderson), an accountant in the accounting office, became co-chairs of the Task Force. In a January 8, 1992, status report, they informed Baker that a campus-wide survey would be conducted and their recommendation for a permanent structure for staff input would begin after completion of the strategic planning effort. Results of the survey that followed indicated a desire for a permanent body to make staff concerns known in areas other than those covered by collective bargaining.

CSEA soon became concerned about these activities. On January 31, 1992, CSEA staff representative Teven Laxer (Laxer) protested to Negranti that the Task Force was conducting a survey on campus to solicit input for the SPD. Pointing to Strafacci's November 14, 1991, memo, Laxer explained his concern that the survey sought input in a variety of areas that fell within the scope of representation and were included in the memorandum of understanding (MOU) between CSEA and CSU.

The introductory portion of the survey explained to employees that the Task Force was formed "to represent the Cal Poly support staff in commenting on the draft of the university's Strategic Planning Document." The introduction continued, "we,

the members of the Task Force, are asking for your opinions to help us draft our recommendations."

In addition, the introductory language in the survey stated that "wages, hours, and working conditions are addressed in collective bargaining agreements, not in the SPD." Nevertheless, the survey covered a number of negotiable topics, many of which were already addressed in the MOU.

On March 30, 1992, the Task Force submitted a lengthy document of recommendations regarding the SPD to Vice President Koob. The cover memo pointed out that the Task Force "confidently predict[s] a noticeable improvement in job satisfaction and morale for those support staff who choose to take part in the evolving process of shared decision making. The campus-wide survey we took last fall supports this conclusion."

The specific recommendations submitted by the Task Force addressed many items that arguably fall within the scope of representation. Among these were use of fee waiver for the academic advancement of staff, enhanced professional growth opportunities, review of evaluation procedures and performance standards, safer working environment, and improved training opportunities.

In the area of campus governance, the Task Force recommended a new structure that embraced a "higher degree of shared decision making." Part of this recommendation was that the existing governance structure undergo an evaluation. As a vehicle to accomplish this, the Task Force recommended the establishment of

a staff council. The recommendation noted further that "approximately 80% of those who responded to the staff survey felt a formal, recognized body was needed to address staff concerns."

In a final report presented to Vice President Koob on July 3, 1992, the Task Force addressed the second charge given it by President Baker -- to recommend a permanent structure for providing staff input on issues not covered by collective bargaining agreements. In doing so, Co-Chairs Eileen Anderson and Ellen Stier formally recommended the establishment of a Staff Council on the Cal Poly campus. Described as an "overdue step in shaping the consultive framework at Cal Poly," the recommendation included detailed bylaws that covered, among other things, representation, employee eligibility, elections, officers, meetings, and committees.

Relying on Strafacci's memo, the Task Force described the relationship with exclusive representatives as follows:

It is the feeling of the staff council that the role of the council is not in conflict with collective bargaining. The position of the CSU, according to [Mr. Strafacci's memo of November 14, 1991], even allows for staff councils to include collective bargaining subjects on their discussion agendas, as long as they don't negotiate with campus administrators in an attempt to change such policies or to administer the collective bargaining agreement. We are hopeful that the unions will eventually accept the staff council as a partner able to provide a non-confrontational forum for discussing and resolving staff issues and concerns. [Fn. omitted.]

In a July 29, 1992, letter to Ellen Stier and Eileen Anderson, President Baker thanked them for their work. "You and your colleagues have performed a valuable service for the Cal Poly community, and I want to express my appreciation and my positive reaction to your proposals," Baker wrote.

These events continued to cause great concern in CSEA ranks. As Laxer testified, "we saw the recommendations they had made relative to the strategic planning document. And there were items in that document that we felt to be within the scope of representation. And so we had reason to believe that the staff council was going to continue to pursue an agenda of dealing with issues within scope of representation." Moreover, Laxer testified,

[W]e essentially wanted to make sure that the staff council was not going to be involved in matters within the scope of representation and we were especially concerned because we saw the ad hoc staff task force, which of course led to the development of the staff council . . . I guess we weren't sure if they really knew what was in scope and what was not in scope. We saw the survey, for example, that I testified about earlier. That survey dealt with issues such as parking and professional development and sexual harassment, issues within scope.

In August 1992, President Baker accepted the recommendation to establish a Staff Council. Baker retained authority over the bylaws and some appointments.⁸ In doing so, he informed co-chairs Ellen Stier and Eileen Anderson that he wanted several

⁸Stier described the acceptance process as follows: "This was not a two-way discussion. We made a recommendation and he told us what his recommendation would be."

areas of the Cal Poly administration represented on the Staff Council. Contrary to the recommendation of the Task Force, this representation would take the form of "ex officio" members from the administration who would attend meetings but would not participate in elections, prepare agendas, or vote. President Baker also informed the co-chairs that the Staff Council would "neither negotiate or discuss matters" within the scope of negotiations. Because the scope of representation "lacks a concise definition," President Baker wrote, "we must use a cautious approach on matters to be undertaken by the Staff Council. I will need to be sure that there is no inadvertent crossing of the line into collective bargaining. I believe the administrative ex officio members can be helpful to the Staff Council and to me in this regard."⁹ Accordingly, Baker appointed Lebens as an ex-officio member to observe meetings and ensure the council did not stray into union issues.

Lebens testified that his ex-officio status was a "passive" one, unless called upon to "enlighten the group on the topic at hand." One of his primary duties was to intervene if a discussion strayed into matters within the scope of representation. In recent years, however, he said his role has been to provide an "administrative report" to the Staff Council. These are "informational updates" that often deal with the status of the budget or other matters of interest to the general campus

⁹CP Ex. 71, pp. 18-20.

community. He characterized his reports as "factual representations."¹⁰

The formal approval of the Staff Council by Baker was publicly announced in the Cal Poly Report, a university publication, on September 14, 1992. The mission statement of the Staff Council provides:

In order to support and promote the mission of Cal Poly, the Staff Council will: provide a forum for open communication and shared collegiality; serve as an official representative body for all Cal Poly staff in non-collective bargaining matters; educate, inform, and involve staff to ensure their inclusion in the University decision-making process; support and assist in providing opportunities for professional growth and achievement for all interested staff members; value diversity and promote mutual respect and interaction among all individuals; and promote the recognition of staff employees for their professionalism and contribution to the University and the Community.

In addition, Stier testified it was her hope that campus unions and the Staff Council would work "in tandem" on issues of concern. However, she said it was not necessary for a representative of the Labor Council, a coalition of campus unions, to be given a seat on the Staff Council because the Staff Council was not established to deal with union issues. Pat Harris (Harris), the coordinator of women's programs and services

¹⁰Topics covered in these reports included ballot initiatives, campus construction projects, safety programs, campus technology, enrollment, and committee appointments. It is not uncommon for other management officials to attend Staff Council meetings for similar reasons.

at Cal Poly, served as the first chairperson of the Staff Council, from January 1993 to June 1994.¹¹

Staff Council Operation

On October 19, 1992, Ellen Stier asked President Baker to establish an operating budget of \$1500 for the Staff Council. Baker agreed to do so shortly thereafter, establishing an account to be administered by the office of Frank Lebens, who had become vice president for business affairs.¹²

The 1995-96 budget reflects a request from Staff Council for the purchase of PageMaker 5.0 to produce its newsletter, the Update. Lebens testified that Cal Poly underwrites the cost of producing the newsletter because it serves as a desirable communications device. CSEA pays for the cost of its newsletter.

The Staff Council is made up of approximately 30 employee-members who are nominated and elected in secret ballot elections by constituent-employees in their respective areas on the campus. These areas and the number of employees in each are established in the Staff Council bylaws. The personnel office provides the Staff Council with a list of employees in voting areas to help determine the number of representatives permitted per area. It was under this structure that CSEA president Sally Anderson was

¹¹Thereafter, Harris served as a Staff Council representative until the end of 1995.

¹²In addition, the parties stipulated at hearing that Cal Poly has given the Staff Council a similar level of financial support in subsequent years: 1993-94 - \$1,500; 1994-95 - \$1,500; 1995-96 - \$2,000; and 1996-97 - \$1,500. The Staff Council also received smaller amounts from Cal Poly and other sources for miscellaneous reasons. (Jt. Ex. 9.)

elected to a two-year term on the Staff Council, from June 1994 to June 1996.¹³

The structure of the Staff Council includes a number of committees and subcommittees. These include, for example, the executive committee, elections committee, diversity committee, and the safety committee.

In addition, the Staff Council conducts monthly meetings with agendas published in advance. Minutes are taken of each meeting. Lebens reviews the minutes of Staff Council meetings soon after they are prepared for distribution, and he has found only minor errors.

The Staff Council operates out of an office on the Cal Poly campus, and it regularly produces a newsletter called the Staff Council Update. Lebens does not review the newsletter before it is distributed.

The Staff Council is permitted to communicate electronically with its individual members and constituent employees via an "alias account." The Staff Council also has a web page that allows employees access to information concerning meetings, agendas, and other announcements. The web page is also used by employees to send electronic mail (E-mail) to the Staff Council. Web pages also permit access to minutes of Staff Council

¹³Sally Anderson served on the Staff Council as an elected representative from the information technology services area. She did not serve on the staff council as a CSEA representative.

meetings, the Staff Council annual report, and the roster of Staff Council representatives.

The Cal Poly employee handbook includes a section on the Staff Council, explains that the council has been endorsed by President Baker, and describes its role in terms similar to the mission statement quoted above.

By the end of 1992, the Staff Council on the Cal Poly campus had held its first election, and held its first meeting on January 13, 1993. It was attended by President Baker. Prior to the meeting, Baker congratulated Pat Harris, the Staff Council's first chairperson. "I applaud your interest in getting involved in this important endeavor to enhance collegiality on the campus," Baker wrote.

From the beginning, CSEA was concerned about the release time given employees who participated in Staff Council activities. On May 20, 1993, Lisa Rothstein (Rothstein), a CSEA representative, complained to personnel officer Negranti that Staff Council members and employees who attend Staff Council meetings were given release time. Because CSEA did not receive the same benefit, she told Negranti, the grant of release time to the Staff Council under these circumstances violated HEERA.

Nonetheless, Staff Council representatives continued to receive release time. An announcement in March 1995 seeking to attract employees to serve for a two-year term on the Staff Council states that Cal Poly recognizes Staff Council responsibilities as part of normal duties.

Bonnie Krupp (Krupp) served as chairperson of the Staff Council in 1994-1995. She testified that she attended Staff Council meetings during regular working hours because her supervisor views Staff Council work favorably. Other supervisors do not share the same view, Krupp said, so use of release time for Staff Council activities is not evenly administered throughout the campus. On cross-examination, however, she said that the statement in the Staff Council announcement above (regarding Cal Poly's recognition of Staff Council responsibilities as part of normal duties) is accurate.¹⁴ Lebens similarly testified that participation in the Staff Council is similar to membership on any University standing committee and members are given release time to participate.¹⁵

In addition, it is undisputed that the Cal Poly administration openly endorsed and supported the Staff Council in other ways. For example, in a June 30, 1994, memo to administrators and department heads announcing the election of Staff Council officers, President Baker wrote:

The Staff Council meets regularly to provide advice and council [sic] to the University. I would like to take this opportunity to again recognize the importance of the Staff

¹⁴(R.T., Vol. X, pp. 113-119.) Stier also testified that she performed Staff Council duties on work time. However, her overall work load was not reduced by her supervisor and she was able to perform her required duties. (R.T., Vol. VII, p. 136.)

¹⁵(R.T., Vol. IX, pp. 47-49.) In addition, a January 19, 1993, memo from Baker to management employees states that "participation in the Staff Council and its committees should be looked upon in the same manner as membership on any other University Standing Committee." (CP Ex. 76.)

Council in our collegial environment and ask you to join me in encouraging staff to participate in the activities of the Staff Council and its committees.

Participation by the staff provides us with an opportunity to broadly engage the university community in issues that are important to all of us. Please join me in support of the Cal Poly Staff Council.^[16]

Cal Poly Committees

The Staff Council's annual report, dated August 23, 1993, cites as a goal inclusion in Cal Poly's decision making process. The report described the council's participation in a number of Cal Poly committees as one vehicle to achieve that goal.

One extremely important goal of the Staff Council is to ensure the inclusion of staff in the decision-making process of the University. To that end, Council members have been very active from the beginning on the Charter Campus Task Forces. A Staff Council representative is presently part of the selection committee for the new Director of Human Resources, and a representative served on the finance committee for the Semester/Quarter Committee. The Chair of the Staff Council is a member of the President's Advisory Committee on Budgets and Resource Allocations. Additionally, staff members have expressed a strong interest in being part of the various campuswide committees, and the Council will explore that possibility further in the coming year.

In a September 13, 1993, letter to Pat Harris, President Baker congratulated the Staff Council for its work and stated "I look forward to the council's continued participation in the governance structure of the university . . . Staff members have a

¹⁶Jt. Ex. 11.

particularly important role to play in promoting and implementing total quality management."¹⁷ Harris responded on October 20, 1993. She acknowledged that the Staff Council had been "asked to nominate representatives to numerous campus-wide committees" and concluded with a request for Baker's "continuing and open support" of our efforts to change the campus climate. "We hope that you will lead the way in creating a supportive environment for staff development by clearly communicating to management that staff is not only allowed, but also actively encouraged to participate in campus governance."¹⁸

In his testimony, Lebens described the differences among types of committees. He said an "advisory committee" is one that gives advice and makes recommendations. Most often recommendations are made to the president, and he may accept or reject them. A "decision-making committee" is one that has been delegated plenary authority to make decisions that are not subject to reversal. Typically, these are management committees. An "ad hoc committee" has a finite life and is convened for a specific purpose.

Pat Harris, who served as chairperson in 1993 and 1994, testified that it was important for the Staff Council to have representatives on campus committees to provide input into the process. However, she testified, the Staff Council

¹⁷CP Ex. 76, p. 24.

¹⁸CP Ex. 76, p. 25.

representative does not always obtain information about the administration's view of the process.

Bonnie Krupp, who served as chairperson of the Staff Council in 1994-95, testified that "the reason we wanted to become involved in committees is because there are issues being discussed at those campus-wide committees that affect staff and we feel that it's important that staff members are able to be there to hear what's going on so that they can come back and tell other staff members what's happening and what's important."¹⁹

According to Krupp, the Staff Council secures seats on various committees through requests for nominations that are extended by the chair of the committee or others with authority to do so. After soliciting candidates from its constituents, the Staff Council typically submits recommendations to the committee and a selection is made. The only requirement for nomination and selection is that the candidate be a staff employee.

Also, under existing regulations, the Staff Council is legally prohibited from having membership on certain committees. The Campus Administrative Manual (CAM) provides that some committees are off limits to groups like the Staff Council, some provide for observer status only, and others provide for appointment. Thus, a blanket appointment to all campus committees is not possible.²⁰

¹⁹R.T., Vol. X, p. 104.

²⁰In January 1995, to avoid the time spent in seeking committee by committee appointments of Staff Council representatives, Krupp formally asked the Committee on Committees

A Staff Council representative serves on or has served on a number of standing committees.²¹ These include the following: Committee on Committees, University Budget Advisory Committee, Public Safety Advisory Committee which replaced the Campus Safety and Risk Management Committee, Substance Use and Abuse Advisory Committee, Educational Equity Commission (diversity) Committee, Information Competence Committee, Status of Women Committee, and Campus Fee Advisory Committee. These are advisory committees.²²

Lebens testified that membership on standing committees ultimately is determined by President Baker, and Staff Council representation "would be through the president." The general purpose of Staff Council representation on standing committees, Lebens said, is to get "a broader perspective."²³

While the general subject matter addressed by most of the standing committees is indicated by the name of the committee, the Committee on Committees has a more expansive role. Chaired

to amend CAM to permit Staff Council representation on all campuswide standing committees. The request was not received favorably. Krupp had made a similar request of President Baker in October 1994, apparently with similar results.

²¹Representatives of the Labor Council serve or have served on standing and search committees. There are a number of other committees that include no Staff Council representative or Labor Council representative. (Jt. Ex. 12.)

²²Jt. Ex. 12.

²³R.T., Vol. IX, pp. 51-52.

by President Baker and composed of high-ranking management officials,²⁴ the function of the Committee on Committees is

To oversee the operations, functions, and membership of all campuswide standing committees which are appointed by the University President or a designee, and to recommend any needed changes therein. To review and recommend on the establishment of additional campuswide standing committees, or the deletion or combination of existing campuswide standing committees. Upon request of the University President, to formulate recommendations on the establishment, functions, and membership of ad hoc campuswide special committees.^[25]

On October 11, 1996, President Baker appointed Bonnie Krupp as Staff Council representative to the Committee on Committees. President Baker reminded committee members "of the importance of communicating with their constituents on issues of interest. The effectiveness of standing committees is directly related to timely input from represented groups."²⁶

In addition, a Staff Council representative serves on or has served on a number of so-called "search committees." These include committees to hire a dean of library services, director of human resources, provost and vice president for academic

²⁴The Committee on Committees is comprised of incumbents in the following positions: president, provost and vice president of academic affairs, vice president of student affairs, president of associated students, chair of the academic senate, executive assistant to the president, non-voting secretary designated by the president, and the Staff Council chairperson or designee. (Jt. Ex. 12, p. 2.)

²⁵Jt. Ex. 12, p. 2.

²⁶CP Ex. 97, p. 82.

affairs, vice provost for information technology/chief information officer, and vice provost for institutional planning. Incumbents in these positions supervise staff and effectively make recommendations in areas such as budget allocation, hiring, promotions, transfers, performance-based salary, and grievances.

On November 20, 1995, Baker solicited nominees from the Staff Council to serve on the search committee to fill the position of provost and vice president of academic affairs. The Staff Council responded a few weeks later with three nominees and Baker selected Mary Whitford (Whitford) to "represent the Staff Council on the Consultive Committee" to select a provost.

Sally Anderson testified that both the Labor Council and the Staff Council interviewed the finalists for the provost position for about 20 minutes in March 1996, but the Labor Council did not have a representative on the committee making the recommendation for the final selection.

In October 1992, Juan Gonzalez (Gonzalez), vice president for student affairs, established a similar search committee for the position of associate vice president for student affairs. He invited the Staff Council to submit nominations for membership on the committee and selected Mary Lou Sneed (Sneed) from the nominees.

In March 1995, Gonzalez also asked the Staff Council to recommend a Staff Council representative to serve on the search committee for the director of health and psychological services

position. Krupp recommended Vivian Phillups (Phillups) and Gonzalez appointed her to the committee.

Harris testified that it was important for Staff Council representatives to serve on search committees because "the person who is being recruited, searched for, would end up being the supervisor or boss of staff people." She said "it was important for the staff to have input on, yes, people who were hired for the University."

President's Advisory Committee on Budget Resources Allocation

The President's Advisory Committee on Budget and Resources Allocation (PACBRA) advised President Baker on the Cal Poly budget and allocation of funds. It dealt with budget principles. Actual budget cuts were made by program managers who had authority to do so. PACBRA was strictly an advisory committee and existed from approximately 1993 to 1997. On February 14, 1997, it was replaced by the University Budget Advisory Committee.

PACBRA was chaired by Vice President Koob. Vice President Lebens served as a member of PACBRA for the life of the committee. Harris was a member of PACBRA during the entire time she was chairperson of the Staff Council, from January 1993 to June 1994.

Harris testified that her role was to bring staff concerns to the committee, engage in a discussion or dialogue regarding

these concerns, and gather information from the committee in areas where budgetary problems might affect staff.²⁷

On January 29, 1993, Harris attended a PACBRA meeting as the first Staff Council representative to do so. At that time, the committee was beginning to deal with a projected \$6.3 million budget reduction facing Cal Poly as a result of 1993-94 projections. In a Staff Council Update that followed, Harris wrote that

PACBRA has not detailed any specifics yet. Rather, it is involved in a consultive process, at this time referred to as the "what if" phase. The initial task of the group was to decide on what overarching formula would be used as a framework for discussion. On February 12, PACBRA decided to go with an approach that postulated a 5% cut for academic instruction, with remaining divisions and academic support taking a 7.4% cut. The entire library budget was excluded [or] protected from the allocated reduction.

Describing future activity for PACBRA, Harris also wrote that

the next job for PACBRA is to begin looking at what the specific impact of this budget reduction scenario will be on each unit. In other words, we must take what has until now been a philosophical approach, and begin to examine how each unit will be altered should this approach become reality.

After further discussion of budget issues, Harris continued:

Throughout March and April the various units will submit their plans for budget reductions to PACBRA; and in April, PACBRA will develop a model for dealing with reductions. This PACBRA proposal will be submitted to the President for review and consideration. There is no doubt that the proposed budget reductions will have a profound effect on all

²⁷R.T., Vol. IX, p. 163.

constituencies -- faculty, staff, and students.^[28]

At a Staff Council "special session" on February 13, 1993, the budget was discussed and Harris gathered suggestions from the participants. However, she did not present them to PACBRA. Harris testified "I think that what I asked PACBRA was simply to keep the staff informed of what the decisions were that were being made, to communicate with the staff, and allow the staff in some way to have some input into the decision-making."²⁹

In a "philosophical statement" requested by Koob, Harris on March 10, 1993, wrote that cuts in staff undermine Cal Poly's ability to meet the needs of the students. Arguing for a "balance in budget reductions so that no single constituency suffers unduly," she continued:

It must be acknowledged that support staff are responsible for the educational environment and the auxiliary services provided to students and faculty; and that a core number of staff are necessary to maintain the infrastructure of the university. To further cut staff will undermine the university's ability to meet the needs of the students.^[30]

²⁸This issue of the Staff Council Update was distributed to every staff person through the campus mail. (R.T., Vol. IX, p. 166.)

²⁹(R.T., Vol. IX, p. 147.) Jim Conway (Conway), then president of the California Faculty Association (CFA) was a member of PACBRA from 1990-1995. He similarly testified that the committee received input and "Koob and the University administration would do whatever they wanted with the budget after seeking the input." (R.T., Vol. VII, p. 29.)

³⁰R.T., Vol. IX, pp. 148-149; CP Ex. 75, pp. 8-9.

In 1994, Krupp succeeded Harris as the Staff Council representative to PACBRA. Because 1994 was an "off-budget" year, Krupp testified, discussion was limited. As a non-voting member of the committee, Krupp said she served as a "communication mechanism."

Charter Campus Concept

Cal Poly in early 1993 began to explore a concept called the "charter campus." It was loosely modeled on the charter school concept that exists for kindergarten through twelfth grade. According to Frank Lebens, the charter campus concept was "broadly designed as initially laid out . . . to look at various mechanisms to improve the campus operation that might carry with it some freedom from some of the existing constraints, be they statutory or regulatory in nature. It was a rather sweeping concept with not a lot of initial constraints or restrictions as to what might be explored." Several committees were eventually formed to pursue the charter campus concept at Cal Poly: oversight committee, governance committee, fiscal flexibility committee, and employee relations committee.

Also established was the Charter Campus Task Force (CCTF) which included representatives from the administration (7), faculty (4), unions (4), Staff Council (1), and students (1). Topics discussed by the CCTF included student and curricular issues, as well as possible exemptions from statutes (including HEERA) and regulations governing working conditions within the scope of representation. The aim of the CCTF was to develop a

proposal that would be taken to the CSU Trustees and possibly pursued as legislation.

Marsha Epstein (Epstein), CSEA chief steward and former co-president, was a member of the CCTF. She described a February 10, 1993, meeting where Vice President Koob showed a video on "paradigm shifts" which presented the idea that theoretically there were no limits on potential changes under a charter campus structure. Describing the meeting as a "brainstorming" discussion, Epstein testified that PERB, HEERA, general labor laws, and collective bargaining were discussed as "barriers" to creation of a charter campus.³¹

Lebens similarly described the meeting as "brainstorming session" or "open-ended discussion." He testified

[t]he idea of the session was just to allow free expression of the ideas in response to the question what would we like Cal Poly to be. It was an attempt to get people to, as the term goes, think out of the box, not be constrained by current ways of doing business in defining our future.³²

CSEA and the Labor Council did not totally oppose discussions about the charter campus concept. However, CSEA representative Lisa Rothstein, in correspondence and meetings with Baker, stressed that unions and employees were becoming increasingly concerned that the CCTF would be dealing with terms

³¹R.T., Vol. VI, pp. 41, 43; CP Ex. 101, pp. 2-3.

³²(R.T., Vol. IX, pp. 69-70; CP Ex. 101.) Along the same lines, Lebens acknowledged in his testimony that the CCTF had no authority to conduct a campus referendum on collective bargaining. (R.T., Vol. IX, p. 72.)

and conditions of employment.³³ Eventually, the Labor Council proposed to Baker that any recommendation to the CSU Trustees include certain written guarantees concerning wages, benefits, and working conditions. It also was proposed that Cal Poly not seek an exemption from HEERA or regulations that govern terms and conditions of employment. Finally, the Labor Council proposed that Cal Poly agree to binding arbitration as a dispute resolution mechanism.

In a response to the Labor Council on August 10, 1993, Baker said the fundamental principle of exploring a new charter is to improve the educational experience of students through new and creative ideas. While this may result in some change in policies, Baker said, there is no intent to undermine collective bargaining rights or seek exemption from HEERA or other regulations covering terms and conditions of employment.

Not satisfied, Labor Council member APC filed an unfair practice challenging the charter campus initiative. CSEA did not join APC in this action initially, opting instead to engage in further correspondence and discussions with Baker.

CSEA's concern at this juncture, as explained to Baker, was that it was the exclusive representative of employees for matters within the scope of representation, yet it had been short-changed in the charter process. In her letters to Baker, Rothstein asserted that individual union activists were on various

³³During this period, a survey of employees indicated that the majority disapproved of the Charter Campus Concept.

committees and working groups, but there had been no formal recognition of them as such and campus unions were not given the right to appoint their own representatives.

It was Baker's position that the parties simply had different views about the charter process. He requested that Koob form a statewide team to engage in a broader discussion with unions about the concept.

Eventually, CSEA decided to join the unfair practice charge filed earlier by APC. In April 1994, the parties agreed to a settlement of the unfair practice charge. A major part of the settlement involved the creation of a Charter Campus Employee-Employer Relations Committee (CCEERC) to deal with issues involving matters within the scope of representation that grew out of the charter campus process. The settlement agreement provided as follows:

In the discussion of the Charter Campus, the general charter vision task force(s)/committee(s) will have the ability to conceptually discuss all issues, with the stipulation that issues that may lead to proposals related to the terms and conditions of employment will be referred to the Employee Relations Committee for DISCUSSION, definition and disposition as per HEERA. CONCEPTUAL DISCUSSION WITHIN THE GENERAL CHARTER VISION TASK FORCE(S)/COMMITTEES\ (S) SHALL NOT INVOLVE SUBSTANTIVE, IN-DEPTH EXPLORATION OF ISSUES RELATING TO WAGES,

HOURS, AND OTHER TERMS AND CONDITIONS OF
EMPLOYMENT.^[34]
(Emphasis in original.)

Pursuant to the settlement agreement, the CCEERC was to be composed of six union representatives and six management representatives. The management representatives were to be appointed by Baker. Observer status was provided for representatives from the academic senate and the student body. The committee did not include a Staff Council representative. However, Koob and Lebens agreed with representatives from CFA that a Staff Council representative could attend the meetings as an observer.³⁵

In a November 4, 1994, letter to convene the first CCEERC meeting, Koob wrote that "members of the Charter Process Oversight Committee have also been invited to attend the first meeting. In addition, each constituent campus group, i.e. the Academic Senate, students and Staff Council, has been invited to attend any of the meetings as observers."

Krupp regularly attended meetings of the CCEERC on behalf of the Staff Council. She testified that Lebens told her the CCEERC was not structured to include a Staff Council representative, but

³⁴Consistent with this agreement, the Charter Campus Fiscal Flexibility Committee (CCFFC) referred a series of issues to the CCEERC for consideration. These include questions related to job classifications, salaries and benefits, performance measures and compensation, disassociation from unions, possibility of endowed chairs/professorships, and flexible salary schedules for non-traditional faculty assignments. (R.T., Vol. IX, p. 28; Res. Ex. 5, appendix C.)

³⁵R.T., Vol. IX, p. 30; Res. Ex. 5A, p. 1.

the meetings were open. Krupp attended about eight meetings as an unofficial observer, but did not participate in any way. Minutes of the CCEERC meetings list the Staff Council representative as "Guest." Lebens testified that he has no recollection of any follow-up discussions with Krupp about any matter discussed at a CCEERC meeting.

The CCEERC was to remain in existence until June 30, 1995, unless renewed by mutual agreement. CSEA refused to renew until Cal Poly took steps to remedy what the union perceived as favored status afforded the Staff Council. Eventually, the dispute about the role of the Staff Council in the CCEERC caused CSEA to withdraw from the committee. The CCEERC was in existence during 1993-1995. A final report of the CCEERC was submitted after twelve meetings.

During its existence, according to Lebens, the CCEERC established several subcommittees to explore various issues. The Holiday Closure Committee (HCC) was a subcommittee of the CCEERC. One topic considered by the HCC was the feasibility of closing the campus between December 25, 1996 and January 1, 1997. Minutes of the February 2, 1995, HCC meeting show that issues under consideration by the committee included, among other things, holiday pay, administrative leave, and impact of collective bargaining agreements that might stem from a campus closure.

One proposal pursued by the HCC was to grant employees administrative time off for the closure. However, Lebens

disagreed and the matter was dropped at the March 14, 1995, meeting. The CCEERC operated on a consensus model that required total agreement if a proposal was to go forward. Therefore, the HCC recommended the issue be abandoned. Sally Anderson testified that Bonnie Krupp was present as an observer from the Staff Council at the CCEERC meeting when this matter was discussed, but Krupp did not participate.

Meanwhile, Rosemary Bowker (Bowker), a Staff Council representative, became concerned about the impact of the planned closure on her department. She testified that a closure would effect laboratory preparation for the upcoming quarter, equipment maintenance, and collecting necessary materials to begin the new quarter. These concerns prompted a series of E-mail messages, in August and September 1995, to Staff Council members urging them to gather input from their respective constituencies regarding impact of a campus closure.

Some responses addressed personal preferences rather than the impact of a campus closure on their work. In an E-mail, on August 25, 1995, Bowker attempted to clarify her request. She wrote:

The plan to "observe" two holidays (Washington's Birthday and Veteran's Day) in 1996 during the Xmas week was announced two weeks ago. The staff council is not attempting to survey staff to decide whether this should take place or not but simply to find out if this decision affects any work areas (e.g. financial aid which cannot process any funds until 10 days before the start of the quarter.),

Staff would NOT be required to take vacation. Staff would NOT be required to take these as days without pay. Sorry for the confusion. Since there was so much discussion in my department over the potential impact (how do we grow cultures for class use that have to be started in advance) that I failed to provide more information when I asked about impact in other work areas.^[36]
(Emphasis in original.)

Bowker testified that she did nothing at that time with the responses she received.³⁷

In another E-mail to Staff Council, on August 30, 1995, she said:

Last week we asked for feedback from staff concerning the plans to close the campus during Xmas of 1996. We have now learned that this idea is being re-considered in response to concerns that were raised by various areas on campus. Please watch for more information.^[38]

Soon after sending this message, Bowker was asked by Harvey Greenwald (Greenwald) of the Academic Senate for a summary of the responses she collected.

This prompted another E-mail to Staff Council constituents on August 30, 1995. It stated that "I have been asked to provide a summary of the feedback I have received concerning the possible closure . . . I need 'nuts and bolts' information -- if it would impact your work area."³⁹ Once again, Bowker testified, she was

³⁶CP Ex. 80, p. 39.

³⁷R.T., Vol. IX, p. 109.

³⁸CP Ex. 80, p. 42.

³⁹CP Ex. 80. p. 44.

seeking information regarding the impact a closure would have on employee work; she was not seeking employee preferences.

On August 31, 1995, Bowker sent a detailed summary of the feedback to Greenwald. Bowker testified that she forwarded the information only to Greenwald. She said it was not forwarded to anyone else because it raised issues within the "purview of the union" and would be inconsistent with the "method of doing business with the collective bargaining agents."⁴⁰

Meanwhile, during the time the charter concept was under consideration, there also existed a Charter Governance Committee (CGC). The CGC was formed in approximately October 1994; 18-20 meetings of the CGC took place between that date and July 1995. Chaired by Vice President for Student Affairs, Juan Gonzalez (Gonzales), the committee consisted of students (3), faculty (3), Staff Council (2), Labor Council (2), and administrators (2).⁴¹

The purpose of the CGC, Gonzalez testified, was to enhance communication among all constituent groups on campus. "We were looking for a body we could consult with and a body that we could entrust with helping us communicate information to the rest of the campus."

Epstein described the role of the CGC as one of developing a governance structure for Cal Poly -- referred to as the Cal Poly

⁴⁰R.T., Vol. IX, pp. 112-113.

⁴¹The Staff Council representatives were Harris and Eric Doepel (Doepel). They were appointed by Koob. The Labor Council was represented by Conway and Epstein; Cal Poly was represented by Gonzalez and Koob.

Governance Council or CPGC -- operating under a charter.⁴² She said the committee functioned very well in a "collegial and pleasant environment" because the "buy-in" of the Labor Council was necessary for the CGC and ultimately the charter project to go forward.

One of the most contentious discussions in CGC meetings centered on who would represent staff employees on the CPGC, the unions or the Staff Council. Eventually, Conway and Epstein reluctantly agreed to a twelve-member CPGC composed of representatives from the administration (3), faculty through the faculty senate (3), students (3), and staff employees through the Staff Council. Gonzalez agreed that the discussions leading to the agreement evidenced an understanding that campus unions would participate as members on the CPGC.⁴³ Minutes of the May 3, 1995, meeting where the CGC established the CPGC structure indicate that "every attempt will be made to ensure labor council representation in the membership" through the seats allotted to the Staff Council. However, no labor representative was included.

The Cal Poly Plan

Meanwhile, in 1995 pursuit of the charter campus concept gave way to a related concept known as the Cal Poly Plan (CPP). Lebens, who served on the Cal Poly Plan Steering Committee (CPPSC) for one year and is now an ex-officio member, described

⁴²R.T., Vol. VIII, p. 52; CP Ex. 136.

⁴³R.T., Vol. VIII, p. 25.

the CPP as "a mechanism whereby we could preserve the qualitative aspects of the campus through encouraging bottom up participation and ideas along with some provision for resources to make those ideas come to fruition through the assessment of an additional fee to the students."

According to Lebens, the CPPSC is a "consensus body" that advises Baker "on the goals and the principles behind the Cal Poly Plan and the process for accomplishing those." Lebens described it as an "agenda setting" group that meets three or four times per month. Baker retains final decision-making authority as to any recommendations.

The CPPSC is made up of representatives from the student body (3), staff (named by the Staff Council) (3), Academic Senate (3), and Labor Council (1). Appointments are made by Baker, but he honors recommendations by constituent groups. The CPPSC has been in existence for two years.

In an April 19, 1995, report to the campus community, Baker outlined the elements of the CPP.

1. Access. If we are to achieve adequately funded growth, in what areas should this growth be realized? Should we make fuller use of the Summer Quarter to decrease the time to a degree for our students? Should we offer our Summer Quarter to other CSU students?

2. Funding. How should this growth be financed? . . .

3. Diversity. What steps should be taken to further diversity? How should diversity considerations be used in determining areas of growth in the student body as well as the faculty and staff?

4. Productivity, Quality, and Accountability. In addition to using our physical plant more efficiently, what other productivity measures should we consider? In fact, how do we define "productivity" in an academic setting? How does educational quality fit in this definition? And how do we define "accountability"? Once we have defined these measures, how do we make it possible for students, faculty, staff, and administrators to be more productive?^[44]

Baker's report also announced that a "white paper" would be prepared on the CPP. Prior to doing so, he continued, "the administration is continuing to consult with Academic Senate leaders, . . . [student] leaders, staff leaders, and the three Campus Charter committees whose membership is drawn from the faculty, students, staff, and administration, as well as employee labor groups."

In the Fall 1995 issue of the Update, Provost and Vice President for Academic Affairs Paul Zingg (Zingg) wrote an article entitled "Staff to have Full Participation in Cal Poly Proposal." If the CPP is fully implemented, Zingg wrote, Cal Poly would consider increased hiring, new training, and improvements in facilities and equipment.

On May 5, 1995, Baker met with the Staff Council regarding the CPP. Krupp, who has served on the CPPSC since 1995, testified that the Staff Council had several questions and invited Baker to appear. After making a 30-minute presentation, Baker answered questions about the CPP.

⁴⁴CP Ex. 93, pp. 5-6.

As chairperson of the Staff Council, Krupp responded with a follow-up thank you letter. In the letter she wrote that "we are interested in the practical side of the process, what can we do to assist in the implementation, and what type of expectations can we have with regard to incentives." She concluded, "the Charter discussions have gone a long way toward fostering communication between administration, faculty, staff and students, and we look forward to our continued inclusion in this dialogue." Asked if she expected that the Staff Council would have a role as partner in the CPP, Krupp answered "as part of the communication process with staff, yes."

On June 19, 1995, Epstein and Conway wrote to Baker requesting Labor Council representation on the CPPSC. They pointed out that the steering committee was to be modeled after the CGC and, accordingly, "every effort should be made" to include a Labor Council representative. In a July 3, 1995, response, Baker appointed George Lewis (Lewis), a CFA representative, as a full voting member to the CPPSC. Baker also wrote:

As you know, the Employee Relations Committee has emerged as a very effective forum for discussing employee relations issues in general, and matters pertaining to collective bargaining in particular. The Cal Poly Plan Steering Committee will refer issues pertaining to collective bargaining to the Charter Employee Relations Committee and it would also like Employee Relations perspectives brought to the work of the Steering Committee. There should thus be an active link between the Employee Relations Committee and the committee charged with guiding development of the Cal Poly Plan.

I believe the goals of the Employee Relations Committee linkage and Labor Council representation can both be achieved by adding the labor co-facilitator of the Employee Relations Committee, Professor George Lewis, as a full voting member of the Cal Poly Plan Steering Committee. As a full voting member, the Employee Relations Committee representative will be able to participate actively in the Cal Poly Plan Steering Committee and the Employee Relations Committee and also bring Labor Council perspectives to the Steering Committee's discussions.^[45]

Baker concluded, "before arriving at a final decision, I would certainly like to hear the Labor Council's thoughts about this approach."

Upon expiration of Lewis' term, Baker contacted CFA president Jim Zetzsche (Zetzsche) for a list of names from which he could select a replacement for Lewis. A list was provided and Baker selected Bernard Strickmeier (Strickmeier), a faculty member.

Labor Council representatives learned of the appointment through an article in the Cal Poly Report. In a November 1, 1995, letter to Baker, the Labor Council protested the appointment of Strickmeier and the process under which it was accomplished. According to Epstein, union representatives were not satisfied with the appointment of Strickmeier because Zetzsche had little contact with the Labor Council and he was a poor choice to provide a list (Conway had been the CFA representative). The Labor Council also asked that a

⁴⁵CP Ex. 134.

representative selected by members of the Labor Council be appointed.

In a January 13, 1996, response, Baker acknowledged that Strickmeier was not a member of the Labor Council. Nevertheless, he said, faculty representation was important because of the issues bearing on the academic program that are central to the work of the CPPSC, and there were no plans to expand the membership. Baker concluded, "as in the past, we are always willing to meet with the Labor Council to discuss current issues."

Meanwhile, the Staff Council and its members on the CPPSC were engaged in activities relating to the overall goal of the CPP. One such activity was a survey to determine how certain aspects of the CPP plan might affect employees. Each representative on the CPPSC was to survey its members to ascertain priorities for the CPP.

On September 13, 1995, the Staff Council circulated to its members a "Cal Poly Plan Trial Questionnaire" to pretest it for the purpose of avoiding unclear questions and confusing results in the final survey. Among other things, the survey asked questions about the potential impact of implementing a full summer quarter, professional development, and use of resources in areas such as technology, equipment, and training.

The Staff Council determined that results of the survey would be too difficult to measure if a large number of employees responded. As a result, Staff Council member Eric Doepel began

work with George Stanton (Stanton) and Stephen Lamb (Lamb), both Cal Poly statisticians, to develop a "more quantitative survey."

Sally Anderson and other Labor Council representatives became concerned about the Staff Council's role because the survey covered matters within the scope of representation. After the Labor Council complained to Lebens and Edna Chun (Chun), director of human resources, about the survey, they agreed that some of the topics could be within the scope of representation and Chun's office took over the survey. The Staff Council, through E-mail messages, continued to encourage its constituents to respond to the survey, which was now under Chun's supervision.

The trial questionnaire prepared by the Staff Council is similar to the final survey conducted by Chun. Lebens testified that he met with representatives of the bargaining units about the content and format of the final version that was eventually prepared and distributed by Chun's office. That version is more detailed, presented in a different format, and thus more "quantifiable." However, it seeks primarily the same information as the Staff Council draft.

Chun confirmed that Lebens told the Staff Council their trial questionnaire could not be used, and her office prepared the final survey after consulting with managers on campus. Consequently, Chun testified, the Staff Council did not provide input into the final survey. "I did not feel the staff council had captured what I considered to be the concerns of employees so

I was happy to have the opportunity to redo it," Chun said.⁴⁶ Lebens agreed. He said the Staff Council was "out of the loop" with regard to the final document, and its representatives even expressed some dissatisfaction with it.

The CPP remains a viable program. It was considered by the CSU Board of Trustees, Committee of the Whole, during a July 1996 meeting.

Academic Calendar

The academic calendar is prepared in the office of the president. On May 12, 1995, the Academic Senate was asked for recommendations regarding the 1995-96 calendar. The Academic Senate, which is responsible for reviewing the calendar, took no action in this instance. After it was adopted, Greenwald, who was chairperson of the Academic Senate, asked Zingg to reconsider it.

Zingg called a meeting on September 13, 1995, to discuss the calendar. Present were representatives of the Staff Council (Bowker), Labor Council (Sally Anderson and Epstein), and Academic Senate. On the agenda were a number of issues relating to the calendar. These included topics such as incorporating a student reading day in exchange for identifying Washington's Birthday and Veteran's Day as academic work days, rescheduling holidays to be observed during the Christmas period, and closing

⁴⁶Chun conceded that "we looked at a number of documents; one was the staff council survey. It was the only one of the inputs that we had. As I mentioned, there were several others. And there was a lot of campus input." (R.T., Vol. VIII, p. 94.)

the campus. Also included were descriptions of various scenarios or alternatives.

According to Zingg, his decision to reconsider the calendar was based on communications with the Academic Senate and his response was "exclusively" to address the Senate's concerns. Prior to the September 13 meeting, Zingg testified, the Staff Council had expressed no concerns to him regarding the calendar.

Bowker described her participation at the September 13 meeting as follows:

I didn't make recommendations on behalf of staff council. We discussed the pros and cons of various scenarios. Dr. Zingg presented a series of proposed calendaring in which the holiday would be observed at different times and the discussion centered around what would be the consequences of doing one schedule versus another schedule.^[47]

Bowker also testified that the feedback she earlier received from employees "came out in the discussion." She brought up some of the concerns of staff, such as "cutting the checks, cleaning the dorms, prepping for laboratories, that sort of thing."⁴⁸ Sally Anderson described Bowker as an "active participant" who made "suggestions" and "recommendations" regarding the impact of the calendar on employees.⁴⁹

⁴⁷R.T., Vol. IX, pp. 131-132.

⁴⁸R.T., Vol. IX, p. 132,

⁴⁹R.T., Vol. V, pp. 38-39.

Zingg raised the possibility of conducting a survey of employees to determine their preferences. Sally Anderson insisted such a survey was a union matter and Zingg agreed with her that it should be turned over to the Labor Council.

Chun also attended the September 13, 1995, meeting. Asked if she was concerned about the Staff Council's participation, she testified: "I wondered, I wasn't really sure about the whole discussion, you know, but anyway, I was not the person who set up the meeting so I attended the meeting simply."⁵⁰

On September 20, Zingg wrote to those who had attended the September 13 meeting. He thanked them for meeting on short notice "in order that consultation could occur with all campus constituencies" regarding "finalization" of the academic calendar. He described three "agreements" reached at the meeting as follows.

First, a calendar was agreed to which identifies Washington's Birthday as an academic work day and includes a student reading day immediately after the last day of classes.

Second, Zingg wrote, there is a "campus concern about the need for adequate and timely consultation on issues such as the calendar. The administration pledged to take appropriate steps to insure this consultation occurs in the future."

⁵⁰(R.T., Vol. VIII, p. 91.) Chun testified earlier that she had a concern that the calendar should be discussed with the collective bargaining agents, and she so informed Zingg. Zingg's office responded that he had made no separate contact with the Staff Council other than the September 13, 1995, meeting. (R.T., Vol. VIII, pp. 77, 89.)

Third, an issue remaining for resolution in the winter quarter 1996, concerned the need to identify an appropriate compensating vacation day for Washington's Birthday. "Please take this issue before your respective constituencies and provide us with a recommendation," Zingg said in his letter.

In conclusion, Zingg informed the participants that he will "convene the calendar consultation group within a few weeks to review the Spring Quarter 1996 proposed calendar and to begin consideration of the 1996-97 and 1997-98 full Academic Calendars. An early beginning of this process should ensure a thorough and appropriate engagement of all interested parties in the determination of our calendar."⁵¹

On November 30, 1995, Baker announced the "work schedule for the 1996 Calendar year."⁵² Among other things, the calendar included holidays and a directive to supervisors about scheduling employees during periods when the campus is closed. In the announcement, Baker also said holidays on the new calendar that occur after the expiration of existing collective bargaining agreements (an event which was to occur prior to the last day on the calendar) are tentative and subject to negotiations with appropriate exclusive representatives.

Proposed Semester System

In 1994, Baker was considering a switch from the quarter system to the semester system. The Staff Council conducted a

⁵¹CP Ex. 46.

⁵²CP Ex. 80, pp. 96-99.

survey to determine which system employees preferred. The tally was 257 for the quarter system and 243 for the semester system. On June 2, 1994, Staff Council chairperson Pat Harris informed Baker of the results and indicated that if he had any questions to contact her.

Baker later asked the Staff Council for information regarding the impact of a change. In a October 4, 1994, memo to the Staff Council, chairperson Bonnie Krupp said "the President wants to know how specific areas would be affected, positively or negatively, by a change to semester -- both during and after implementation." Krupp solicited the information from staff.

In a November 21, 1994, memo, Krupp responded to Baker with the results of the survey. Attached was a detailed summary of the negative and positive responses of employees categorized by departments on campus. Krupp's memo contains no proposal about any aspect of the semester/quarter issue. However, it informed Baker that a conversion "will be a tremendous amount of work for many staff members, and will necessitate additional time commitment and energy from staff who are already working at full capacity."

Results of the survey itself, edited and compiled by Krupp on a department basis, cover a wide range of topics. Among other things, Krupp's 21-page summary of the survey results addressed a number of topics that are relevant here: greater volume of work, more efficient distribution of workload, adjustment of work schedules, layoffs, health benefits, payroll, custodial work

responsibilities, parking, and hours.⁵³ From CSEA's perspective, many of these involved matters within the scope of representation. Sally Anderson testified that CSEA was never asked for its input in the semester/quarter discussion.

Baker did not respond personally to Krupp. However, his special assistant, Dan Howard-Greene (Howard-Greene), sent a note thanking her for the information. No Cal Poly representative discussed the information with Krupp.⁵⁴ Krupp reported to the Staff Council on this issue at a meeting on December 13, 1994. There has been no change in the quarter system at Cal Poly.

Parking

Joe Risser (Risser) was the director of public safety from March 1992 to May 1996. In this capacity, he told the Staff Council that he would "be happy to meet with them any time if they had a concern." He frequently attended meetings of groups on campus to answer questions and "share information."

Minutes of a Staff Council meeting on November 17, 1993, indicate that Risser was in attendance and discussed an employee concern about the conversion of 100 staff parking spaces to metered spaces for visitors. Although Risser had no recollection of the meeting, the minutes show that he explained budget formulas and stated that because parking is an auxiliary enterprise, it must be self-supporting. Consequently, the decision to install parking meters was made to generate revenue.

⁵³CP Ex. 128.

⁵⁴R.T., Vol. X, pp. 85-86.

In addition, the minutes state, Risser was asked a series of questions related to parking on campus. Among the issues discussed was the need for a loading zone space in the lot behind the administration building. Epstein, who was present, described the meeting as "a back and forth discussion."

After the meeting, parking administrator Cindy Campbell (Campbell) learned of the questions asked at the November meeting. On December 14, 1993, she sent Risser an E-mail with information relating to many of the questions. With respect to one of the questions, the E-mail stated "my suggestion would be for the staff council to formally propose that one '30 min. Staff Loading' space be created in the small lot adjacent to the Admin. Bldg accessed from inner perimeter. This would seem to address the need to unload close to the bldg., while maintaining the passenger loading zone for its intended use." Risser forwarded the E-mail to Pat Harris, then Staff Council chairperson. His E-mail to Harris stated: "information on Staff Council requesting a staff loading space in the lot behind the admin building is being forwarded for your information. The request should be forwarded to Frank [Lebens]."⁵⁵

After the meeting with Risser, Epstein testified, modifications to the campus parking policy were made that were consistent with the suggestion made by Campbell in her December 14 E-mail to Risser.⁵⁶

⁵⁵R.T., Vol. VI, p. 32; CP Ex. 81, p. 4.

⁵⁶R.T., Vol. VI, pp. 30-32, 77-78.

Emergency Response Plan

During the summer of 1994, fires near Cal Poly caused the campus to close for a day. At a Staff Council meeting on August 17, 1994, concerns were raised about campus procedures in the event of such emergencies. On August 24, 1994, Krupp sent Risser the concerns raised by employees along with suggestions that might be helpful if a similar emergency occurs in the future. The same correspondence invited Risser to a Staff Council meeting on October 11 to discuss related issues. The topics in the material sent to Risser included, among others, emergency notification procedures, designation of an emergency contact, and cancelling classes due to thick smoke. The primary focus was on emergency procedures.

In a response to Krupp, Risser said "there are a number of very helpful suggestions and I will follow up on these and have answers or at least responses at the meeting on the 11th." Krupp responded: "Thank you for your response to the staff comments and suggestions for emergency procedures. The Staff Council feels that we can help in this type of a situation by giving people an opportunity and a means to communicate our concerns."

Risser attended the Staff Council meeting on October 11. He said "I went and shared some information with them and there were some comments made by them and some comments made by me in what I would say was an open exchange of information."

Also on October 11, Risser responded in writing to numerous comments and concerns attached to Krupp's August 24 memo. One

item to which Risser responded was submitted by Eric Doepel, a Staff Council representative. Doepel had suggested the Annual Giving Department's calling system be used to advise employees in emergencies. Risser wrote, "we learned many lessons from the [fire] experience and have gained a number of excellent suggestions from the comments forwarded." He continued: "Both Annual Giving's telephone system and the campus Voice Mail system can be utilized to get information out by calling staff and faculty. We will be developing procedures for using this equipment and staffing this function."⁵⁷

After discussing a host of suggestions relating to emergency procedures, Risser concluded: "I welcome the opportunity to talk with Staff Council about campus emergency planning and appreciate any and all comments and suggestions toward improving campus community safety."⁵⁸

In addition, Risser attended a Staff Council meeting on January 10, 1995, where he made a presentation on the campus emergency plan.⁵⁹ He testified that he told the Staff Council their suggestions were welcome and he considered them in updating campus policy.

⁵⁷(R.T., Vol. VII, p. 69; CP Ex. 81, p. 36.) As a result of the fire, CSEA and CSU negotiated an agreement covering administrative leave and emergency pay for affected employees. (R.T., Vol. IX, pp. 11-112; CP Ex. 79.)

⁵⁸CP Ex. 81, p. 37.

⁵⁹R.T., Vol. VII, pp. 70-71; CP Ex. 75, p. 135.

President's Council

The President's Council is a management advisory body to Baker. On May 19, 1993, Lebens wrote to Baker regarding the possibility of the Staff Council having a representative on the President's Council. He suggested the matter be discussed among management representatives.

Minutes of the Staff Council meeting of March 16, 1994, indicate that Lebens suggested Pat Harris, then chairperson of the Staff Council, attend meetings of the President's Council. CSEA was not afforded the same opportunity.

Fall Conferences and Workshops

Cal Poly sponsors an annual conference each fall to welcome faculty and staff to the new year. Announcing the 1995 Fall Conference, President Baker described it as "a week filled with opportunities: to learn about Cal Poly and its services, policies and procedures; to explore critical issues facing the university; to meet, discuss and plan for the coming year; and to acquire new skills and competencies."

The Staff Council was not included on the agenda for the Fall Conference in 1993. In an E-mail to Koob, Krupp objected and noted that the Staff Council has diligently worked to accomplish its mission and improved communications on campus. She stated further: "I understand the political implications and the problems caused by the union unfair labor practice action, but our hard work should not be ignored. In addition, I certainly do not feel 'represented' by [Labor Council speaker]

James Conway and know that many other staff members feel the same way."

At hearing, Krupp testified that she did not feel "represented" by Conway because he was a faculty member. In her view, staff members should be able to welcome other staff members at the Fall Conference. She did not suggest CSEA as a participant "because as a staff person that wasn't what I was trying to express. I was just trying to say that as a staff person I didn't feel represented by a faculty person." She also testified that CSEA should have been on the agenda, and the union was included subsequently. With respect to her reference to the unfair practice charge, Krupp testified that "people were feeling uncomfortable with having staff council as a presence because they didn't know how other people in the Union would react to that."⁶⁰

Koob's E-mail response to Krupp stated:

I share your disappointment, Bonnie, but am unclear on what to do about it. In my book, Staff Council deserves a spot before CFA, but I am not at all clear on the ramifications concerning the bargaining units. I know, because I have seen the paperwork, that the units are very upset that we have gone ahead and formed the council. I am sure [President Baker's] decision was one of not throwing gasoline on the fire. I am sure he is thinking that it is better to preserve the Staff Council rather than doing things that might get it "outlawed."^[61]

⁶⁰R.T., Vol. X, pp. 128-130.

⁶¹R.T., Vol. X, p. 131; CP Ex. 76, p. 19.

Koob and Krupp had no follow-up conversation.

On January 4, 1994, Harris lodged a protest with Baker about the omission of the Staff Council from the Fall Conference general session. She said the conference was faculty-oriented and many employees raised objections with her. "We urge you to give serious consideration to the inclusion of a representative of the Staff Council on the program for next year," Harris wrote. On April 28, 1994, Baker's office informed Harris that the Staff Council would be permitted to present a two-minute speech at the 1994 Fall Conference. The president of the Labor Council was given the same opportunity.

During the Fall Conference in 1995, the Staff Council and the Labor Council delivered opening remarks. In addition, the Staff Council held a 45-minute "general session" but the Labor Council did not. The Staff Council and the Labor Council also delivered opening remarks at the 1996 Fall Conference.

Meanwhile, in 1994, Sally Anderson attended a "goals workshop" sponsored by the Staff Council. Facilitators at the workshop were personnel officer Negranti and Jean Decosta (DeCosta), director of employee assistance programs. The workshop was held during the work day.

Sally Anderson testified that one aspect of the discussion centered on ways the Staff Council could gain more influence on campus and "become closer to the administration." Her suggestion that the group discuss ways the Staff Council could strengthen its relationship with campus unions was not warmly received.

Instead, she testified further, the discussion focused on topics such as Staff Council participation in recruitment committees, recognition of Staff Council as the "true voice for staff," and increasing the Staff Council's voice on campus in all areas in which decisions are made that "affect [employee] work."

In comparison, Krupp described the workshop as a "brainstorming" session or an "open free flowing type of discussion" about Staff Council goals for the upcoming year. The discussion was conducted in a framework that took the Staff Council from a "vision statement" involving a particular goal to realization of the goal.

Sonoma State University

The idea to form a Staff Council at Sonoma State University (SSU) was born in 1991 during a meeting between CSEA Chapter President Kathern Salsedo (Salsedo), a secretary in the Academic Senate office, and incoming SSU President Ruben Arminana (Arminana). Salsedo raised no objection to the concept and in fact willingly pursued the topic with Arminana. Arminana, who was familiar with the staff council concept as a result of his experience at another CSU campus, said he was in favor of starting a Staff Council at SSU. Salsedo soon circulated a memo to employees to measure employee interest.

Salsedo was in favor of starting a Staff Council because she felt it would relieve her of the obligation to deal with several issues that were consuming her time. She was busy with negotiations concerning layoffs and budgetary matters and her

time to attend meetings was limited. It is clear that Salsedo initially was enthusiastic about the formation of the Staff Council.

Sue Foley (Foley), a secretary in the masters program in counselling, women's and gender studies, first learned of the Staff Council when she received Salsedo's memo. Foley, who became chairperson of the Staff Council Steering Committee (SCSC), testified that Salsedo was recognized as a founding force for the Staff Council and given a plaque.

The SCSC began to conduct meetings in late 1992.⁶² According to Foley, its main purposes were to draft a constitution to present to Arminana and conduct elections. During this period, Jeff Todd (Todd), director of personnel, met with the committee and explained that terms and conditions of employment were not within the scope of the committee's activity, but he said the committee could "talk about" anything. By May 1993, elections were held and the Staff Council held its first meeting.

⁶²From the beginning, Arminana met with the Staff Council on several occasions and indicated his support. For example, minutes of the September 18, 1992, meeting indicate that a meeting was planned with Arminana. (CP. Ex. 1, p. 2) On September 20, 1993, Arminana met with Mike Kiraly (Kiraly), then Staff Council chairperson, and expressed his continued support. (Jt. Ex. 4, p. 14) On April 13, 1995, Arminana met with the Staff Council and addressed a number of topics, including a computer access policy and projected enrollment. (Jt. Ex. 6, pp. 10-11) On February 8, 1996, Arminana met with Staff Council officers and discussed a cost-of-living raise. (Jt. Ex. 7, p. 5.)

The Staff Council constitution states its purpose as follows:

A. It will foster staff representation at the administrative level, in matters which affect the general welfare of the University (outside the scope of collective bargaining as defined by Higher Education Employer-Employee Relations Act [HEERA]).

B. The Staff Council will gather suggestions and proposals submitted in writing from staff relating to campus matters outside the scope of collective bargaining and forward recommendations to the appropriate authority.

C. When appropriate, the Staff Council will sponsor and organize group activities which promote the recognition of staff achievements and amiable interaction and communication amongst the campus community.^[63]

The Staff Council receives funding from President Arminana's discretionary account in a private corporation known as Sonoma State Enterprises, Inc.,⁶⁴ and from the office of Larry Furukawa-Schlereth (Furukawa-Schlereth), vice president for administration and finance. The Staff Council uses the money for activities such as staff picnics, photocopying services, and charity events. Staff Council expenditures are reviewed by SSU to determine if they violate existing policies.

Foley, who has been an active participant in the Staff Council since its formation, testified that Staff Council members receive release time for meetings. She said half of the time

⁶³Jt. Ex. 3.

⁶⁴Approximate amounts of funding from the corporation are: \$3500 in 1994-95; \$5000 in 1995-96; and \$7000 in 1996-97.

spent in Staff Council meetings is the employee's time and the other half is "State time." This arrangement came as a result of an early meeting with Arminana. Employees do not receive release time for attending CSEA meetings.

In addition, Staff Council representatives have been reimbursed for travel expenses to attend two systemwide Staff Council meetings at other campuses. Furukawa-Schlereth testified that he viewed their attendance as work on behalf of SSU.

The Staff Council has been provided no office on the SSU campus. Nor has it received assistance in the form of equipment such as filing cabinets. The Staff Council uses campus computers and campus E-mail to communicate with its constituents.

The Staff Council conducts monthly meetings in campus facilities and publishes agendas of the meetings in advance. Minutes of the meetings are published, loaded onto a campus computer, and stored in the campus library. The Staff Council newsletter, the Staff Connection, is also stored in the library. The newsletter is funded by the SSU office of administration and finance.

Training, Professional Development, and Fee Waiver

On March 6, 1995, a Staff Council committee for training and development circulated among employees a draft memo to Arminana designed to bring attention to various training needs. The memo cited "upgrading of computer skills and training in accessing information technology" as a crucial need, and it asked to revisit policies denying fee waivers or discounts to employees

who take extended education courses, use of flex-time, and the meaning of the term "work-related" classes.⁶⁵

Minutes of a March 16, 1995, Staff Council meeting indicate that Nancy Reynolds (Reynolds), chairperson of the training and development committee, reported that she had received several comments in response to the draft memo, and final comments were needed for an upcoming meeting with Arminana.

On March 21, 1995, the final draft of the memo was sent to Arminana. Among other things, it included requests for training in computer skills; information about how to pursue opportunities for career development and professional advancement; fee waivers for extended education courses and a modest "slush fund" for employees who are interested in pursuing special interests through professional development workshops; and a liberal interpretation of term "work-related" as it relates to fee waiver classes. The responsibility of responding to the memo was delegated by President Arminana to Vice President Furukawa-Schlereth. Furukawa-Schlereth testified that he advised Arminana to do nothing with the memo or any of the proposals.

At about this time, Sue Foley met with David Walls (Walls), dean of extended education, about the fee waiver issue. She testified:

We went in there like a fact-finding group. And we wanted to find out if there was any possibility of better access to extension courses for staff people. And somewhere along the line, David Walls said that they

⁶⁵CP Ex. 11, pp. 2-3.

give a 20 percent discount to extended education employees. And he didn't see any reason why that couldn't apply to [any staff member].⁶⁶

After the meeting, a 20 percent discount for extended education courses was offered to staff members.

On October 23, 1995, the Staff Council sent a memo to Arminana and Furukawa-Schlereth regarding staff training and development needs. Among other things, the memo indicates that "a reduction in cost for staff to take Extended Education Courses was negotiated. Other specific courses will be offered at reduced fees as opportunities arise." The memo also requests that "enrollment in any University class that offers benefits of personal growth or well-being be accepted as 'work-related,' and that the President support that concept with managers across campus." Furukawa-Schlereth received a copy of the October 23, 1995, memo on or about the date it was sent.

Furukawa-Schlereth testified that SSU has taken no action with respect to the agreement described in the Staff Council's October 23, 1995, memo, and neither he nor Arminana were aware of the extended education course discount prior to the filing of this unfair practice charge. He said "let me be very clear, there was no agreement between the administration and the staff council."⁶⁷ Upon learning of the discount, he said, he developed

⁶⁶R.T., Vol. II, p. 151.

⁶⁷(R.T., Vol. II, pp. 61, 65, 88.) As noted, Furukawa-Schlereth received a copy of the Staff Council's October 23, 1995, memo at about the time it was sent. (Jt. Ex. 10.) Also,

a "curiosity about the arrangement" and began an analysis to determine if it was consistent with Education Code requirements. Furukawa-Schlereth also spoke to Staff Council chairperson Nancy Reynolds, who told him that a "deal had been struck" with Walls. Furukawa-Schlereth never discussed the fee discount with Walls. Walls did not testify at hearing.

Work Schedules

According to minutes of a May 11, 1995, Staff Council meeting, Arminana had an "informal" discussion with Greg Tichava (Tichava), Staff Council member, about the ten-hour day summer schedule. According to minutes of another Staff Council meeting in 1995, Mattiassi gave Arminana results of a staff survey regarding the ten-hour day and described concerns voiced by employees that relate to repetitive work syndrome and child care. The minutes also indicate that Arminana would present the survey results to the executive cabinet and suggest that the summer schedule would be evaluated in the fall. The record also contains a May 23, 1995, memo from Mattiassi to the Staff Council

according to minutes of the Staff Council meeting on November 9, 1995, training was discussed in detail with Furukawa-Schlereth. (Jt. Ex. 6, p. 31.) And minutes of the Staff Council meeting on December 14, 1995, indicate that Reynolds "passed out her recent memo to VP Schlereth which summarized his meeting with her and [Sherry Mattiassi (Mattiassi)] at which he agreed to make staff training programs a priority of Human Services, urge managers to approve fee waivers for staff to enroll in work-related courses." (Jt. Ex. 6, pp. 32-33.) Furukawa-Schlereth disputed the content of the December 14, 1995, minutes. He conceded only that he told Reynolds and Mattiassi that training and development are a priority and he urged them to follow the MOU as it relates to work-related courses. (R.T., Vol. II, p. 118.)

reporting on her meeting with Mattiassi where she discussed the "4/10."⁶⁸

Mattiassi, Tichava, and Arminana were not called to testify. Asked about the Staff Council meetings referred to above and Mattiassi's report regarding a meeting with Arminana, Foley said she didn't recall the discussion at the meetings, nor could she recall any meetings planned to discuss this matter with Arminana. She said the reference to the survey in the minutes "leads me to believe" that just comments were passed on to Arminana about employee opinion regarding the 4/10 schedule.⁶⁹

Other issues related to work schedules concerned the academic calendar and graduation day. Furukawa-Schlereth testified that Arminana was concerned that SSU did not have a multi-year academic calendar and that graduation was held on a Friday. Arminana wanted to hold graduation on a Saturday to lessen the hardship on parents who travel long distances, but this raised several issues related to hours of work. Many employees work on graduation day and it is the busiest day of the year.

Furukawa-Schlereth advised Arminana that if employees worked more than 40 hours in a week, SSU would have to pay them overtime, grant compensatory time off, or adjust the work week to avoid the payments. Furukawa-Schlereth also advised Arminana

⁶⁸Jt. Ex. 6, pp. 13, 15, 22,

⁶⁹R.T., Vol. II, pp. 170-174.

that the MOU permitted him to modify the workweek provided he complies with the Fair Labor Standards Act.

Layoffs

In early 1993, CSU directed SSU to prepare for significant budget reductions as a result of low projected revenue. On March 15, 1993, immediately after SSU developed a plan to deal with a 6-9 percent cut, Furukawa-Schlereth and Todd convened a meeting with employee organizations to discuss issues related to the budget cut and layoffs. Among the union representatives in attendance was Richard Martinez (Martinez), then CSEA chapter president. Furukawa-Schlereth also invited Staff Council Steering Committee representative Sue Foley as a "courtesy." Foley attended as an observer.

According to Martinez, the parties discussed issues surrounding potential layoffs. He said the topics of temporary layoffs, reassignments, and other effects of layoffs were discussed. It was essentially a "sounding board" to start discussions about potential issues in an attempt to mitigate problems associated with layoffs. Martinez also testified that he expressed his concern about Foley's presence because the discussions were about "labor issues" and it was not appropriate for her to be present at that time.

Furukawa-Schlereth did not consider the meeting a negotiating session. He testified he already knew SSU's planned course of action in general terms and he called the meeting to inform union representatives of that plan, not to negotiate about

it. He invited Foley because she could assist in distributing the information about the meeting as quickly as possible.

Immediately after the meeting, Foley sent out an E-Mail to employees. She described the meeting and the budget process. She also urged employees to communicate ideas or suggestions to the Staff Council Steering Committee, union representatives, or anyone working on the budget.

A similar meeting was held on March 29, 1993, and Foley again attended as an observer. The so-called "clearinghouse" concept for layoffs was discussed at this meeting. In broad terms, that concept is essentially a procedure to be used when dealing with a layoff situation. Martinez testified that the unions had discussed the concept and took the position that "although we will observe it, we won't sign on to it."

It was thought that about 20 employees would be affected by the clearinghouse. Because the unions were concerned about the impact the clearinghouse concept might have on those employees, Martinez testified, they asked Furukawa-Schlereth for names of employees to discuss the situation with them and inform them of their rights. Furukawa-Schlereth told the unions there was no final list.

Immediately after the March 29 meeting, Foley sent out another E-Mail to staff. She indicated there was no final layoff list yet and listed several "scenarios or combinations thereof"

for employee response.⁷⁰ The E-Mail urged employees to respond to her, union representatives, or personnel director Jeff Todd.

Staff Council Affiliation with SSU Human Services

The SSU human services unit is a division of administration and finance. Furukawa-Schlereth is the manager responsible for that division.

According to minutes of a June 13, 1996, meeting, Staff Council chairperson Reynolds gave a report on an earlier meeting with Arminana. The minutes say he "was pleased at how the staff council was progressing" and "generally supportive of the Staff Council becoming affiliated with Human Services." Reynolds reported further that affiliation is a "good way for us to formalize the Council and make sure it continues." The minutes also state that "the President suggested we write up a proposal and present it to Larry Schlereth."

On August 12, 1996, Reynolds sent a memo to Arminana and Furukawa-Schlereth proposing that the Staff Council permanently affiliate with Human Services. Among other things, the proposal called for formal recognition of the Staff Council, annual meetings with Furukawa-Schlereth's office to negotiate a budget, and establishing the director of human services as an ex-officio member of the Staff Council.

⁷⁰Topics for consideration in Foley's E-Mail included the make-up of the applicant pool for jobs, reassignments, bumping rights, hiring people other than those faced with layoff into openings, and filling positions with employees in the same classification.

The proposal also points out that the Staff Council "does not concern itself with issues that would qualify it to be termed an 'employee organization' . . . [under HEERA] . . . specifically 'grievances, labor disputes, wages, work hours and other terms and conditions' that would bring it into conflict with any 'Certified Organizations' providing sole representation to its membership during labor negotiations."

Furukawa-Schlereth testified that he has received the Staff Council's proposal. However, as of the date of his testimony, he had taken no action on it.⁷¹

ISSUES

1. Whether the Staff Council at Cal Poly or SSU is an employee organization within the meaning of section 3562(g)?

2. If so, did either Cal Poly or SSU dominate or interfere with the formation or administration of the Staff Council on its campus by contributing financial or other support, or by encouraging employees to join the Staff Council, in violation of section 3571(d)?

⁷¹A related topic is the Staff Council participation on SSU committees. As CSEA points out in its opening brief, minutes of Staff Council meetings indicate that council representation on SSU committees was discussed at several meetings. (CSEA opening brief, at page 18.) And it appears from minutes of some meetings, that the Staff Council had a representative on the President's Budget Advisory Committee. However, there is limited evidence in the record regarding Staff Council participation on SSU committees, the purpose of the committees, and the role played by the Staff Council member on each committee. Therefore, the Staff Council's role on SSU committees will not be addressed in this proposed decision.

3. Whether either Cal Poly or SSU consulted with the Staff Council on its campus on any matter within the scope of representation, in violation of section 3571(f)?

CONCLUSIONS OF LAW

The Section 3571(d) Allegation

CSEA argues that the Staff Councils at Cal Poly and SSU are employee organizations under HEERA. It is CSEA's contention that the administrations at Cal Poly and SSU have supported and dominated the Staff Councils on their respective campuses by providing funding, release time, use of facilities, and other support. CSEA argues further that Cal Poly and SSU were actively involved in the formation of the Staff Councils and established the councils as highly visible representatives of employees. Throughout this process, CSEA contends, Cal Poly and SSU engaged in ongoing dealings with the Staff Councils on matters within the scope of representation under HEERA. In sum, CSEA concludes, Cal Poly and SSU have violated section 3571(d). APC joins CSEA in these arguments.

In response, CSU argues that the Staff Councils at Cal Poly and SSU are not employee organizations under HEERA. It is CSU's position that neither Cal Poly nor SSU have dealt with the Staff Councils about matters that fall under the general heading of "wages, hours or employment, and other terms and conditions of employment." While CSEA has presented evidence that negotiable matters were discussed at Staff Council meetings, it has not linked these discussions to any subsequent decision. Nor has

In determining whether a group of employees qualifies as an employee organization under the Dills Act or EERA, PERB has held that the organization need not have a formal structure, seek exclusive representative status, or be concerned with all aspects of the employment relationship. The primary inquiry is whether the group has as a central focus the representation of employees in employment-related matters. (See State of California (Department of Developmental Services) (1982) PERB Decision No. 228-S (Department of Developmental Services); Oak Grove School District (1986) PERB Decision No. 582 (Oak Grove).)

Measured against this standard, PERB has found that employers under EERA have unlawfully supported, dominated, and dealt with employee councils and other groups. (See Oak Grove; Redwoods Community College District (1987) PERB Decision No. 650 (Redwoods); Ventura Community College District (1994) PERB Decision No. 1073 (Ventura).) Applying these cases here, CSEA argues for the same conclusion and a violation of section 3571(d).

While these cases may have some relevance here, it is important to note that they were decided under definitions in the Dills Act and EERA that are different in key respects from that found in HEERA.

Section 3562(g) defines "employee organization" as

. . . any organization of any kind in which higher education employees participate and which exists for the purpose, in whole or in part, of dealing with higher education employers concerning grievances, labor disputes, wages, hours, and other terms and

conditions of employment. Employee organization shall also include any person such an organization authorizes to act on its behalf. An academic senate, or other similar academic bodies, or divisions thereof, shall not be considered employee organizations for the purpose of this chapter.

This definition differs from its counterpart in EERA and the Dills Act in that the "dealing with" requirement does not appear in those statutes. Differences in PERB-administered statutes must be recognized, even where this leads to different results under each statute. (Regents of the University of California v. Public Employment Relations Board (1985) 168 Cal.App.3d 937 [214 Cal.Rptr. 698].)

The definition of employee organization under section 3562(g) is closer to the definition of "labor organization" in the National Labor Relations Act (NLRA)⁷³ than it is to the definitions in either EERA or the Dills Act. The NLRA, section 152(5), defines a labor organization as

. . . any organization of any kind, or any agency or employer representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Cases interpreting the federal labor relations laws are persuasive precedent for interpreting similarly worded provisions of California law. (Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608 [116 Cal.Rptr. 507] (Fire Fighters Union).)

⁷³NLRA is codified at 29 U.S.C. section 141 et seq.

Because the HEERA definition of "employee organization" so closely parallels the NLRA definition of "labor organization," federal precedent will be applied here. This is particularly appropriate where, as here, the statutory definition at issue more closely resembles the NLRA than it does the EERA and Dills Act.

Under the NLRA, an entity is considered a statutory labor organization if (1) employees participate, (2) the organization exists, at least in part, for the purpose of dealing with the employer, (3) these dealings concern grievances, labor disputes, or other negotiable conditions of employment, and (4) the entity is geared to represent employees. (NLRB v. Webcor Packaging Inc. (6th Cir. 1997) 118 F.3d 1115 [155 LRRM 2791] (Webcor); E.I. du Pont Nemours and Co. (1993) 311 NLRB 893 [143 LRRM 1121] (du Pont).)

Of critical importance in cases of this type is the meaning of the term "dealing with." Noting that the U.S. Supreme Court in NLRB v. Cabot Carbon, Inc. (1959) 360 U.S. 203 [44 LRRM 2204] (Cabot Carbon), described "dealing with" as a broader term than "collective bargaining," the National Labor Relations Board (NLRB) stated:

The term "bargaining" connotes a process by which two parties must seek to compromise their differences and arrive at an agreement. By contrast, the concept of "dealing" does not require that the two sides seek to compromise their differences. It only involves a bilateral mechanism between two parties. That "bilateral mechanism" ordinarily entails a pattern or practice in which a group of employees, over time, makes

proposals to management, management responds to these proposals by acceptance or rejection by word or deed, and compromise is not required. [du Pont at p. 894, fn. omitted.]

The NLRB observed, in addition, that there are so-called "safe havens" in which a group of employees may operate without unlawfully "dealing with" the employer. For example, a "brainstorming" group whose purpose is to develop ideas is not an employee organization, even though the employer may glean some ideas from the process and adopt them. Likewise, "sharing information" does not transform a group of employees into an employee organization, provided the group makes no proposals to the employer and the employer simply gathers the information and does what it wishes with such information. The NLRB indicated further that the element of unlawful dealing is absent if a committee is governed by majority decision-making, management representatives are in the minority, and the committee has the power to make decisions rather than simply make proposals to management. And there is no direct dealing if management representatives participate on the committee as "observers or facilitators" without the right to vote on committee proposals. (du Pont at pp. 894-895.)

Finally, intent to undermine an exclusive representative is not relevant in determining if a group of employees constitutes an employee organization. (See Webcor Packing Inc. at p. 1122.) Even in situations where, as here, an employer disavows any intent to infringe upon an exclusive representative's bargaining rights, direct dealing may be found.

California Polytechnic State University

It is clear that employees participated in the Staff Council at Cal Poly. It also is clear that the Staff Council functioned in a representative capacity. Its members were elected for specific terms by constituents in defined voting areas within the campus. The record is replete with statements by Staff Council representatives that its main goals are to serve as the voice of employees and to participate fully in campus governance on behalf of employees. As its mission statement indicates, the Staff Council from its inception was designed to serve as an "official representative body for all Cal Poly staff."

It also is beyond dispute that the Staff Council receives support and assistance from Cal Poly in numerous ways. The entire range of Cal Poly assistance need not be reiterated here. Suffice it to say that the Staff Council receives financial assistance and it is permitted to use Cal Poly's equipment for electronic communications with members. Staff Council representatives are permitted to conduct Staff Council activities on release time, and Cal Poly underwrites the production of the Update. Importantly, the very formation of the Staff Council was in large part due to Baker's creation of the Ad Hoc Task Force to recommend a permanent structure as a vehicle for staff input to the Cal Poly administration. In reality, without Baker's and Cal Poly's initiative, approval, and ongoing support, it seems unlikely that the Staff Council would exist in its current state.

This is the kind of conduct that "tends to" favor one

employee organization over another. (Santa Monica Community College District (1979) PERB Decision No. 103.) Thus, if the Staff Council is determined to be an employee organization, Cal Poly will have violated section 3571(d).

The central issue, therefore, is whether Cal Poly dealt with the Staff Council on negotiable matters. To resolve this issue, I have looked to Staff Council activities in several broad areas that comprised the bulk of the evidence presented during the hearing: these include Committee on Committees, standing committees, PACBRA, charter campus concept and charter governance committee, Cal Poly Plan, proposed semester system, parking, emergency response plan, President's Council, Fall Conference, and workshops.

Participation on Committees

Consistent with its expressly stated goal of involving itself in campus governance, the Staff Council was represented on the Committee on Committees and a number of standing committees with President Baker's approval. Staff Council representatives secured seats on these committees to present a "broader perspective," according to Lebens. As Krupp testified, issues discussed at committee meetings affect staff, and it is important for the Staff Council to attend such meetings and report to employees. Harris similarly testified that it was important for the Staff Council to have input into the committees. And Baker was of the view that the effectiveness of standing committees is directly related to "input" from the Staff Council.

At least some of the standing committees on which the Staff Council participated were specifically designed to deal with matters that are not foreign to the negotiations arena. For example, the Staff Council participated on two committees that were set up to deal with safety issues. Aspects of employee safety have been found negotiable. (See e.g., San Mateo City School District (1984) PERB Decision No. 375, p. 83 (San Mateo).) The Staff Council participated on a committee set up to deal with substance abuse, and certain aspects of substance abuse are similarly negotiable. (See e.g., Holliday v. City of Modesto (1991) 229 Cal.App.3d 528 [280 Cal.Rptr. 206].) The Staff Council secured membership on a committee to address the status of women, a committee that covers issues related to employment equity for women students, faculty, and staff. It also reviews campus sexual harassment policy and procedure. Several topics related to the matters addressed by this committee are negotiable. (See e.g., San Mateo at pp. 11-14.) Yet another committee deals with diversity and affirmative action, a matter that PERB has found to be negotiable, provided there is no conflict with state or federal law. (See e.g., San Mateo at pp. 14-15.)

In addition, the Staff Council was granted representation on the Committee on Committees after repeated requests to Baker. This is arguably the most influential committee on campus because it oversees all committees and it has the authority effectively to recommend changes in or abolishment of standing committees,

including committees that deal with negotiable matters and on which CSEA representatives sit. As such it is inextricably connected to committees that deal with negotiable matters. PERB has found negotiable proposals that deal with the creation of advisory committees or membership on advisory committees, provided the proposals bear a logical and reasonable relationship to a negotiable matter. (See e.g., San Mateo at pp. 24, 83-84.)

Therefore, it is concluded that the Staff Council participated in these committees. The next question is whether that participation amounted to dealing with Cal Poly.

I note, initially, that it is not difficult to envision a scenario in which the kind of committee structure at issue here evolves into a bilateral mechanism where intended input by an employee group could be construed as a proposal. This is especially true in light of the vigor with which the Staff Council pursues its role in shared governance. It is for this reason that PERB observed in Redwoods that an employer undertakes such activity at its own risk.

However, the evidence before me does not establish unlawful dealing. Although the committees at issue here are advisory and the Staff Council actively participated, evidence of actual proposals submitted by the Staff Council to the committees is lacking. Nor is there evidence of proposals from the committees to the Cal Poly administration that bear the Staff Council imprint. Whether proposals are exchanged is a key element in determining Cal Poly dealt with the Staff Council for the purpose

of establishing employee organization status. (See du Pont at pp. 894-895.)

As Lebens testified, the purpose of Staff Council representation on the standing committees was to get a "broader perspective." And, as Harris testified, her role was to provide input to the process, bring staff concerns to the committees, engage in a dialogue, gather information, and report back to the Staff Council.

Based on the foregoing, it is concluded that Staff Council participation on the committees in the manner discussed above did not constitute dealing with the council as that term is defined in du Pont.

Nor did Cal Poly unlawfully deal with the Staff Council through the council's participation on search committees. The search committees at issue here were established to fill vacancies in the management ranks, and the committees did not make the final decision. Unlike other committees discussed herein, the search committees on which a Staff Council representative served did not involve a negotiable topic. PERB has held that hiring employees outside the bargaining unit is not a negotiable topic. (See e.g., San Mateo at pp. 38-39.)

Although the person selected to fill a management vacancy may ultimately have an impact on bargaining employees, the connection between hiring a manager and any subsequent impact on employees is speculative at best. In fact, it has been held that occasionally interviewing job applicants is not a factor that

helps to establish unlawful dealing. (See e.g., General Foods Corp. (1977) 231 NLRB 1232, 1235 [96 LRRM 1204].)

Therefore, it is concluded that Cal Poly has not unlawfully dealt with the Staff Council by virtue of the council's participation on panels formed to interview applicants for management positions.⁷⁴

President's Advisory Committee on the Budget

The Staff Council has participated on budget committees since 1993. An advisory committee, PACBRA (now the University Budget Advisory Committee) advised the Cal Poly administration on a serious matter -- a substantial budget cut -- that could arguably affect wages, hours, layoffs, benefits, and more. Even assuming that decisions to implement budget cuts are not negotiable, effects of nonnegotiable decisions are within the scope of representation. (See e.g., Newman-Crows Landing Unified School District (1982) PERB Decision No. 223 (Newman-Crows Landing).)

It is useful to trace Harris' steps on the committee. At the time Harris served on PACBRA, Cal Poly was beginning to deal with a \$6.3 million shortfall. She wrote in the February 1993 issue of the Staff Council Update that PACBRA's initial task was to develop an "overarching formula" as a framework to discuss

⁷⁴The Staff Council also had membership on the President's Council, a management advisory group. Because there is limited evidence in the record about the make-up of the council, discussions at its meetings, or the Staff Council's role in meetings, the argument that Staff Council participation in the President's Council constituted the kind of dealing that suggests employee organization status is rejected.

budget cuts. At a February 12, 1993, meeting, she informed Staff Council members that PACBRA decided to "go with an approach that postulated a 5% cut for academic instruction, with remaining divisions and academic support taking a 7.4% cut." She wrote further that PACBRA would next move from a "philosophical approach" to one that considers the impact of budget cuts on each unit, PACBRA will "develop a model for dealing with reductions," and "there is no doubt that the proposed budget cuts will have a profound effect on all constituencies -- faculty, staff, and students."

Further, in her philosophical statement to Koob, Harris plainly argued for "balance in budget reduction so that no single constituency suffers unduly." Also, Harris said, "to further cut staff will undermine the university's ability to meet the needs of its students." No matter how this language is dressed up, the substantive message is clear. In reality, Harris' "philosophical statement" is a proposal not "to further cut staff."

Read together, Harris' testimony, her article in the Update describing the activities of PACBRA, her role on PACBRA (in which she admittedly brought staff concerns to the committee and engaged in a dialogue regarding those concerns), and her philosophical statement, point to the conclusion that Cal Poly dealt with the Staff Council through PACBRA. Her philosophical statement is a proposal made at Koob's request in the context of a bilateral mechanism. This is the kind of conduct that supports a finding of employee organization status.

Charter Campus Concept

Beginning in early 1993, Cal Poly's exploration of the charter campus concept presented many difficult issues for campus unions that make up the Labor Council. CSEA, for example, felt short-changed in the process because its status as an exclusive representative had not been fully recognized, and campus unions had not been successful in securing guarantees associated with maintaining wages, benefits, collective bargaining rights, and binding arbitration. Early meetings involving the Charter Campus Task force, in which the Staff Council participated, addressed matters such as seeking an exemption from HEERA and collective bargaining.

While discussions of this type are somewhat unusual, and might understandably cause concern in union ranks, I conclude based on this record that Cal Poly did not cross the line into direct dealing. Epstein described these meetings as "brainstorming" discussions. And Lebens said the meetings were merely an attempt to get people to "think out of the box." The CCTF meetings were wide-ranging, brainstorming sessions about a sweeping concept that would transform Cal Poly into a charter campus in the unlikely event that the idea was successfully carried through the CSU system and the Legislature to the Governor's desk and signed into legislation. This is not the kind of bilateral mechanism envisioned in du Pont and no concrete proposals regarding working conditions were presented that would qualify the Staff Council as an employee organization.

Eventually, CSEA became dissatisfied with the process and joined the unfair practice charge filed by APC. In April 1994, the parties reached a settlement of the charge. CSEA agreed that the CCTF and committees would be free to "conceptually discuss" all issues, and issues that may lead to proposals related to terms and conditions of employment will be referred to the CCEERC "for discussion and disposition as per HEERA." Krupp was permitted to attend CCEERC meetings. This was a factor that eventually prompted CSEA to withdraw from the CCEERC.

Krupp's presence at the meetings described in the record strikes me as highly unusual, and it is the kind of conduct that an employer permits at its own risk. However, on the evidence before me, Krupp's mere presence does not support the claim that Cal Poly dealt with the Staff Council. Proposals were not made, other unions agreed to Krupp's presence, she attended as an observer and played no active role, and she engaged in no follow-up discussions about matters discussed at the meetings.

The evidence surrounding the activities of the Holiday Closure Committee, a subcommittee of the CCEERC, points to the same conclusion. In HCC discussions regarding the general issue of closing the campus between Christmas 1996 and January 1, 1997, specific topics such as holiday pay, administrative leave, and impact of collective bargaining agreements were raised. Krupp was present at a meeting where the closure was discussed, but Sally Anderson testified that Krupp did not participate.

Subsequently, in a series of E-mail messages, Bowker surveyed employees about the impact of a campus closure on working conditions, but she did nothing with the information. Pursuant to a request from Harvey Greenwald, a representative of the Academic Senate, Bowker she sent out another E-mail to employees seeking their feedback. Bowker then sent the responses only to Greenwald. She testified that she did not send the information to anyone else because it was within the "purview of the union," and it would be inconsistent with "the method of doing business with the collective bargaining agents."

Cal Poly Plan

The CPP is a broad-based initiative concerning Cal Poly's future. Its focus, in large part, is on student, academic, and fee issues, topics outside the scope of representation. However, it is arguable that the CPP, if implemented, would involve negotiable matters. For example, Baker's April 19, 1995, report to the campus community indicated that an element of the CPP was to make staff "more productive." While the assignment of duties is an employer's prerogative, increased workload due to greater productivity requirements involves a negotiable matter. (See e.g., The Regents of the University of California (1989) PERB Decision No. 771-H (Regents); Fire Fighters Union at pp. 619-620.) And Zingg stated in the Staff Council newsletter that, if fully implemented, the CPP would result in increased staff hiring, new training, and improvements to facilities and

equipment. Training is a negotiable topic. (See e.g., San Mateo at pp. 82-84.)

It is true that the Staff Council was actively involved in the Cal Poly Plan, a program that might very well impact negotiable working conditions, if implemented. However, Baker's letter of July 3, 1995, to Epstein and Conway makes it clear that the CCPSC will refer matters related to collective bargaining to the CCEERC.

Also, Baker's meeting with the Staff Council on May 5, 1995, and Krupp's follow-up letter is not the kind of evidence that supports a conclusion that Cal Poly and the Staff Council were involved in a bilateral mechanism where proposals were included. Baker's meeting was a question and answer session. And, while Krupp's follow-up letter to Baker is evidence that the Staff Council would like to play a significant role in pursuing the CPP, it is not clear that Baker responded in an improper way.⁷⁵ Accordingly, the claim that Cal Poly actually dealt with the Staff Council on negotiable issues, as opposed to merely sharing information or engaging in wide-ranging discussions about broad issues related to the plan, is not supported by a preponderance of evidence.

A substantial amount of evidence relating to the CPP was directed at two other areas: membership of union representatives

⁷⁵Krupp's letter indicated that the Staff Council had an interest in the "practical side of the process," it offered assistance to Baker, and it asked "what type of expectations can we have with regard to incentives."

on the CPPSC and a survey conducted by Chun's human resources office. With respect to CPPSC membership, Baker's appointment of Strickmeier to replace Lewis on the committee met with CSEA displeasure. However, the selection was not wholly unilateral. Baker selected Strickmeier from a list provided by Zetzsche, then president of CFA. While hindsight suggests it would have been advisable for Baker to discuss the matter with CSEA, Conway, or other members of the Labor Council, appointment of Strickmeier from a list provided by the CFA president is not persuasive evidence that Cal Poly was dealing with the Staff Council by virtue of the appointment.

Nor does the survey to determine how the CPP might affect employees show that Cal Poly was dealing with the Staff Council. On September 13, 1995, the Staff Council circulated to its members a trial questionnaire to pretest it for the purpose of avoiding unclear questions and confusing results in the final version. Later, the Staff Council took steps to develop a "more quantitative questionnaire."

However, the survey was never conducted by the Staff Council. Sally Anderson and Labor Council representatives protested that the survey covered negotiable matters. Lebens and Chun agreed, and the human resources office took over the survey. Lebens testified that he met with bargaining unit representatives about the content and format of the final version. Although the survey ultimately prepared by Chun's office is similar in some

respects to the Staff Council survey, it is also more detailed, presented in a different format, and thus more quantifiable.

If the Staff Council had been permitted to conduct the survey and shared the information with Cal Poly in the form of a proposal, we would have a different case. But that did not occur. The Staff Council provided little input into the final survey, and Lebens said the council was out of the loop with regard to the survey. Based on these facts, I conclude that the CPP survey does not constitute dealing with the Staff Council.

Academic Calendar

CSU does not dispute that Vice President Zingg discussed the academic calendar with various constituent groups on campus, including the Staff Council. However, CSU argues, the academic calendar is a faculty issue that is not within the scope of representation.

Granted, the decision to adopt an academic calendar is not within the scope of representation for CSEA. However, effects of such a decision that impact bargaining unit employees are within the scope of representation. (See San Jose Community College District (1982) PERB Decision No. 240 (San Jose).) And negotiable effects not only were discussed at a meeting conducted by Zingg on September 13, 1995, they played a key role in the attempt to adopt a calendar.

Preliminarily, it is important to note the nature of Bowker's participation on behalf of the Staff Council in the September 13, 1995, meeting. She said she discussed the "pros

and cons of various scenarios" presented by Zingg, and the "consequences" of adopting one schedule as opposed to another. She conceded that information she collected earlier from surveying employees on behalf of the Staff Council "came out in the discussion," and she raised concerns of staff such as "cutting checks, cleaning the dorms, [and] prepping for laboratories." In view of this testimony, Bowker's disclaimer that she make no "recommendations" is unconvincing. Even if not presented as a formal recommendation, participation of the kind described here crosses the line that separates brainstorming and sharing information from unlawful dealing.

Therefore, I find that Bowker played an active role in the September 13, 1995, meeting that went beyond brainstorming or information sharing. Bowker participated in a representative capacity on behalf of the Staff Council and engaged in a give and take with Zingg and others that is tantamount to the kind of "dealing with" prohibited by du Pont. Even Edna Chun, the director of human resources, testified that she "wondered" about the participation of the Staff Council in the meeting.

What resulted was a three-part agreement, as evidenced by Zingg's memo of September 20, 1995, and Baker's announcement of a calendar on November 20, 1995. Both documents indicate that negotiable topics were part of the discussion that led to adoption of the calendar.

Specifically, Zingg's memo outlined an agreement reached at the meeting that included, among other things, identification of

Washington's Birthday as an academic work day, and the need to identify a compensating vacation day for employees. Further, Zingg's memo asks participants at the meeting, including Bowker, to "take this issue before your respective constituencies and provide us with a recommendation." Lastly, Zingg indicated he would "convene a calendar consultation group" within a few weeks to begin consideration of the 1996-1997 and 1997-1998 calendars.

Baker's memo similarly indicates that the calendar adopted after the September 13, 1995, meeting includes many negotiable components, all of which need not be reiterated here. Suffice it to say that these include, among others, employee holidays and scheduling of employee work hours during campus closure.

There is some evidence in the record that, pursuant to a request by union representatives who attended the meeting, the calendar was referred to the Labor Council for further discussions. However, that does not alter the decision reached here. Even if the matter was later resolved in cooperation with campus unions, the fact remains that Bowker's participation at the September 13, 1995, meeting was impermissible.

Based on the foregoing, it is concluded that Cal Poly dealt with the Staff Council during discussions on a negotiable topic. The meeting conducted by Zingg, during which a Staff Council representative participated in discussing negotiable components

of an academic calendar, went beyond permissible bounds and constitutes the kind of conduct prohibited by du Pont.⁷⁶

Proposed Semester System

In 1994, President Baker was in the process of considering a change from the quarter system to the semester system at Cal Poly. At his request, the Staff Council conducted a survey of employees to determine whether they preferred a quarter system or a semester system. Also at Baker's request, the Staff Council conducted a survey to solicit information from staff about the positive and negative aspects of the change. The results of the survey, which covered a host of negotiable subjects, was sent by Krupp to Baker on November 21, 1994, in the form of a lengthy summary in which she grouped responses by department.

As the NLRB pointed out in du Pont, one of the so-called safe havens is when an employer simply gathers information and does with it what it wishes. Another safe haven occurs when employees develop a host of ideas for management review, and management gleans some ideas from this process and even adopts some of them. An employer is free to act within either of these safe havens, provided the process involves individual

⁷⁶Baker's memo indicated that holidays occurring after the upcoming expiration of the MOU are tentative and subject to negotiations. Also, Article 14.10 of the MOU appears to give President Baker authority to reschedule certain holidays. However, these factors do not alter the conclusion reached above. Baker's reference to future negotiations merely acknowledges an existing obligation to bargain, and the MOU provides that certain holidays may be rescheduled. They do not detract from the conclusion that Cal Poly unlawfully dealt with the Staff Council about negotiable components of the calendar.

communication and not group action and no proposals are exchanged. (du Pont at p. 894.)

In this instance, the Staff Council's response to Baker involved negotiable topics. It also reflects group action rather than individual employee responses. However, of critical importance is the lack of a proposal. Krupp's transmission to Baker cannot be construed as a proposal, and there was no substantive response from Baker. Instead, his assistant, Dan Howard-Greene, sent Krupp a note thanking her for the information. There has been no change in the quarter system.

Clearly, this is the type of activity an employer undertakes at its own risk. (Redwoods.) However, under the circumstances presented here, I find that the interaction between the Staff Council and Baker on this issue does not constitute unlawful dealing with the council. Although Krupp's lengthy response to Baker addressed negotiable topics in the context of group action, in the absence of a proposal or a response from Baker it must be concluded that the survey was more like sharing information than it was like dealing with the council. (du Pont at p. 894.)

Parking

At a Staff Council meeting on November 17, 1993, then director of public safety Joe Risser discussed a number of parking-related issues with members of the council. One of the issues discussed was the need for a loading/unloading space behind the administration building. It appears that the dialogue between Risser and those in attendance amounted to no more than a

wide-ranging discussion or question and answer session that is permissible under du Pont standards.

However, parking is a negotiable matter under HEERA (California State University (1990) PERB Decision No. 799-H (California State University)) and the events that occurred after the meeting went beyond the kind of conduct permitted by du Pont. Parking administrator Cindy Campbell became aware of the question and answer session and sent an E-mail message to Risser that clearly suggested the Staff Council submit a proposal for a loading/unloading space, a matter discussed at the meeting. Risser, in turn, sent an E-mail message to Harris inviting the same suggestion, and he indicated that the proposal should be directed to Frank Lebens. Epstein testified that loading spaces were established at a later date.

Under these facts, it is reasonable to infer that establishment of additional loading spaces had at least some connection to the discussion at the November 17, 1993, meeting and the Risser/Campbell E-mail messages that followed. However, even if the creation of additional loading spaces was not directly connected to Risser's suggestion to Harris, it is the suggestion itself -- made on the heels of a meeting where the subject of the proposal was raised by the Staff Council in a question and answer session -- that constitutes unlawful dealing. It is unnecessary that a tangible result occur. Advancing proposals under these circumstances constitutes dealing with the Staff Council whether the proposal is made by the employer or the

council and whether it is accepted or rejected. As the NLRB has stated, dealing with is a broader concept than collective bargaining, and compromise is not required. (du Pont at p. 894.)

Therefore, it is concluded that Risser dealt with the Staff Council on a negotiable topic.

Emergency Response Plan

As a result of fires near the Cal Poly campus, the Staff Council on August 24, 1994, sent Joe Risser a list of employee concerns and suggestions to be employed if a similar situation occurred in the future. The following is a brief summary of the events that occurred shortly thereafter.

Risser and Krupp exchanged written correspondence prior to an October 11, 1994, Staff Council meeting which Risser attended. The correspondence contained numerous employee concerns and suggestions, primarily related to emergency procedures, stemming from the 1994 fire. After the October 11 meeting, Risser responded to Krupp regarding the concerns and suggestions raised by the Staff Council. He characterized them as "excellent suggestions."

While several of these arguably address negotiable topics related to campus safety, it is unnecessary to discuss each one here. Suffice it to say that Risser accepted Eric Doepel's suggestion concerning the Annual Giving telephone system. He informed Krupp: "we will be developing procedures for using this equipment and staffing this function." Risser concluded that he

welcomed Staff Council "comments and suggestions" about campus emergency planning.

Risser testified, moreover, that at another Staff Council meeting on January 10, 1995, he told those in attendance that he had considered their suggestions in updating the campus emergency plan. As matters related to safety during an emergency, the topics discussed by Risser and the Staff Council fall within the scope of representation. (See San Mateo at pp. 82-84.)

It is concluded that the interaction between Risser and the Staff Council constitutes unlawful direct dealing. In plain terms, Risser and the Staff Council exchanged correspondence regarding campus safety procedures and met to discuss them. Risser received "suggestions" and adopted at least one submitted by Eric Doepel. Moreover, Risser later indicated to the Staff Council that he welcomed further interaction of this type and, in fact, he considers their suggestions in updating the campus emergency plan.

An employer may engage in brainstorming sessions with a group of employees to develop ideas about a particular subject without dealing with the group. However, as the NLRB takes pains to point out, a brainstorming session loses its protection when proposals are injected into the process. (du Pont at p. 894.) It is concluded that Risser's interaction with the Staff Council on this topic crossed the line and transformed the process from brainstorming into an ongoing bilateral mechanism where he received and accepted at least one proposal.

CSU argues that such conduct cannot be viewed as dealing with the Staff Council because safety-related matters are covered by the MOU. To support this argument, CSU points to several provisions. The MOU sections that are relevant here are as follows. Section 23.5 provides that "recommendations and suggestions regarding safety presented by an employee or the Union shall be considered." Section 23.10 provides that, upon request by CSEA or "an employee," CSU shall provide certain safety-related information. Finally, section 23.11 provides that "as deemed necessary by the President, the CSU shall provide safety training and instruction to minimize illness or injury to employees." I find these provisions inapplicable here.

There has been no request for information by CSEA, nor is there evidence that Baker has deemed it necessary to provide training and instruction. More importantly, these provisions address CSU's interaction with individual employees and, as I understand CSEA's position, it has no quarrel with the employer's right to do so under the terms of the MOU. This case is not about an employer's right to communicate with its employees pursuant to the MOU or otherwise. It is about the legality of group action, not individual communication, that takes place in the context of a bilateral mechanism accompanied by proposals. (See du Pont at pp. 894-895.) Accordingly, I find the MOU provisions cited above inapplicable here.

Conferences and Workshops

The Fall Conference is similar to an orientation session. It is designed to welcome faculty and staff at the beginning of a new year, present Cal Poly's policies and procedures, and discuss issues facing Cal Poly. The Staff Council, along with the Labor Council, has been permitted to make a presentation at Fall Conferences since 1994, and the Staff Council held a "general session" workshop at the Fall Conference in 1995.

Further, in 1994 the Staff Council sponsored a goals workshop. According to Sally Anderson, at least one aspect of the workshop was to promote the Staff Council and explore ways to increase its voice as the representative of staff. In comparison, Krupp testified that the workshop was a brainstorming session about Staff Council goals for the upcoming year, and how to achieve those goals.

I find that the record does not support the claim that either the Fall Conference or the goals workshop constituted unlawful dealing. These events were not bilateral mechanisms where proposals were exchanged with Cal Poly. Rather, they were more like brainstorming sessions where information was exchanged and ideas discussed. Even regularly scheduled conferences held in a union setting to discuss negotiable matters have been endorsed by the NLRB as an example of how an employer can involve an employee group in important matters without establishing the group as a employee organization. (du Pont at p. 897.)

In sum, I have found that Cal Poly has engaged in improper dealings with the Staff Council in four areas involving negotiable matters: PACBRA, adoption of the academic calendar, parking, and emergency procedures. I have also found that Cal Poly has not dealt with the Staff Council in other areas: Committee on Committees, standing committees, search committees, charter campus concept (including Staff Council presence at meetings of the CCEERC and the HCC), CPP (including membership on the CCPSC and a survey conducted by the human resources office), proposed semester system, Fall Conferences, and the general workshop.

The question at this juncture is whether the Staff Council is an employee organization. As discussed above, the threshold test to determine employee organization status requires a showing of a bilateral mechanism between two parties which ordinarily entails a pattern or practice of employee proposals and a management response by work or deed.

If the evidence establishes such a pattern or practice, or that the group exists for a purpose of following such a pattern or practice, the element of dealing is present. However, if there are only isolated instances in which the group makes ad hoc proposals to management followed by a management response of acceptance by word or deed, the element of dealing is missing. [du Pont at p. 894, emphasis added.]

In this case, I find that Cal Poly has engaged in a pattern or practice of dealing with the Staff Council. Moreover, the Staff Council exists for the purpose of following such a pattern or practice. I find it significant that the incidents of dealing

with the Staff Council are the product of highly organized "group action" that includes offering proposals to Cal Poly. (du Pont at pp. 894-895.) The structure and purpose of the Staff Council cannot be overlooked in this regard.

The Staff Council is not a loosely knit group of employees with whom the Cal Poly administration engages in dialogue intermittently. It is a highly organized representational entity which, since its inception in 1993, has carved out a prominent place in campus governance. The Staff Council is made up of employees elected from defined areas of the Cal Poly campus who actively represent their constituents. The Staff Council is financed, supported, and openly endorsed by Cal Poly officials. In this context, the Staff Council openly operates as a highly visible representative of employees on the Cal Poly campus. Importantly, it has been found that Cal Poly dealt with the Staff Council in four negotiable areas and, as discussed below, Cal Poly has unlawfully consulted with the Staff Council in several negotiable areas.

Considered in the totality of the record, Cal Poly's and the Staff Council's disavowal of any involvement in collective bargaining matters is not convincing. A close comparison of the Staff Council with the employee groups found to be employee organizations in Ventura, Redwoods, and Oak Grove leads to the conclusion that the Staff Council is the kind of organization PERB found unlawful in those decisions. Accordingly, it is

concluded that the Staff Council exists for the purpose of dealing with Cal Poly.

I noted at the outset of this discussion that if the Staff Council is found to be an employee organization, Cal Poly will have violated section 3571(d). Having found employee organization status, it is concluded that Cal Poly has violated section 3571(d).

Sonoma State University

It is clear that employees participated in the Staff Council at SSU, and the council is designed to function in a representative capacity. Its constitution states that the Staff Council will "foster staff representation at the administrative level, in matters which affect the general welfare of the University outside the scope of collective bargaining," and "will gather suggestions and proposals submitted in writing from staff outside the scope of collective bargaining and forward recommendations to the appropriate authority."

It is clear, in addition, that the Staff Council received support and assistance from SSU in the form of, among other things, financial assistance, release time, use of facilities, reimbursement for travel, and use of campus computers and E-mail. Thus, if the Staff Council is determined to be an employee organization, SSU will have violated section 3571(d). The question, therefore, is whether SSU dealt with the Staff Council on negotiable matters.

To answer this question, I have looked to Staff Council activities in four general categories: extended education course discount, work schedules, layoffs, and affiliation with human services.

Extended Education Course Discount

At about the same time the Staff Council presented a proposal to Arminana for better training and access to work-related courses, Sue Foley and other Staff Council representatives met with David Walls, dean of extended education, on a "factfinding mission" to find out if there was a possibility of "better access" to extension courses for staff. "Somewhere along the line," Foley testified, Walls said extended education employees receive a 20 percent discount and he didn't see why that discount couldn't apply to staff. An agreement was struck with Walls and a discount for employees who enrolled in extended education courses was offered to staff.

It is reasonable to conclude from this evidence that the meeting with Walls turned out to be more than a mere factfinding mission. Foley proposed "better access to extended education courses for staff," as she described it. In response, Walls agreed to a discount for employees who take such classes. Simply put, Foley struck a deal with Walls. Receiving a discount on extended education courses is a monetary benefit that flows to an employee as a result of his or her CSU employment. It is related to employment because employees who wish to take work-related courses are given a discount to do so. As such, the discount is

a negotiable topic related to wages.⁷⁷ (See e.g., San Mateo at pp. 84-85.) This conduct falls within the definition of "dealing with" under du Pont.⁷⁸

Work Schedules

Work schedules relate to hours and therefore are a negotiable topic under HEERA. (Section 3572(r)(2).) However, the evidence concerning SSU's dealings with the Staff Council on this topic is sketchy at best. CSEA contends that Arminana had two communications in 1995 with Staff Council representatives about topics that impact employee hours of employment. The first was an informal discussion with Tichava about a ten-hour day during the summer session. The second was a meeting with Mattiassi, who gave him results of a Staff Council survey regarding the ten-hour day and communicated employee concerns in the survey.

Evidence cited by CSEA to support these contentions is largely in the form of minutes of Staff Council meetings and a

⁷⁷Section 3562(r)(2) excludes from the scope of representation "the amount of any student fees which are not a term or condition of employment." As a benefit of CSU employment, the discount on extended education courses at issue here is a "term or condition of employment." Therefore, I find the discount is not rendered nonnegotiable by section 3562(r)(2).

⁷⁸Although the evidence indicates the agreement was struck with Walls, the parties fell into a dispute at the hearing about the role Furukawa-Schlereth played. The parties stipulated that the Staff Council's October 23, 1995, memo to Arminana was a proposal, and Furukawa-Schlereth was aware of it at about the time the memo was sent. It also appears that he discussed the proposal with Staff Council representatives at about the same time. However, the finding described above with respect to the meeting between Walls and Foley renders it unnecessary to determine Furukawa-Schlereth's role.

memo from Mattiassi describing a meeting she had with Arminana. Neither Arminana, Mattiassi, nor Tichava testified at hearing. Thus, it is hearsay and may not be used to support a finding. And, and discussed earlier, I find Foley's testimony on these adds little. She could not clearly recall Staff Council events at meetings, nor could she recall planned meetings with Arminana.

Further, evidence concerning discussions between Furukawa-Schlereth and Arminana about the academic calendar and moving graduation day to a Saturday does not indicate SSU dealt with the Staff Council on these issues. It appears that Furukawa-Schlereth advised Arminana without the involvement of the Staff Council.

Therefore, it is concluded that the evidence does not support a finding that the SSU dealt with the Staff Council on work schedules.

Layoffs

In March 1993, CSU was facing a significant budget reduction and the possibility of layoffs. Furukawa-Schlereth conducted two meetings to discuss SSU's course of action with respect to potential layoffs. He called the meetings to inform the various representatives of SSU's plan, not to negotiate about it. In attendance at both meetings were Labor Council representatives, including then CSEA president Richard Martinez. Sue Foley, Staff Council representative, was invited by Furukawa-Schlereth as a "courtesy" and because she could assist in distributing information about the meetings to staff.

Although the meetings conducted by Furukawa-Schlereth involved negotiable effects of layoffs, (Newman-Crows Landing.), the meetings were not negotiating sessions. The meetings were called primarily to inform the various groups in attendance of SSU's anticipated course of action. Even Martinez testified that the meetings were "essentially a sounding board for us to start talking to one another about the types of things we thought would be issues." While negotiable aspects of layoffs were discussed, no proposals were exchanged and no agreements reached. It does not appear that Foley played a significant role in the meetings.

As noted earlier, discussions where an employer involves a group of employees do not automatically constitute dealing with the group as that term is used in du Pont. This is true even when negotiable matters are at issue. An employer may not, however, establish a bilateral mechanism under which it receives proposals from employee groups and accepts or rejects them by work or deed.

In my view, the layoff meetings conducted by Furukawa-Schlereth are an example of where the presence of a Staff Council representative is questionable, and the employer engages in such conduct at its own risk. In this instance, however, SSU did not cross the line into unlawful dealing with the Staff Council. The meetings were held primarily to share information rather than to negotiate. No proposals were exchanged or agreements reached, and Foley was not an active participant. While effects of layoff were addressed, the discussion did not in itself transform the

meetings into unlawful dealings that may used to confer employee organization status on the Staff Council. Further, Foley's post-meeting E-mails were sent directly to employees, they were primarily informational, and they involved no proposal.

Staff Council Affiliation with Human Services

The Staff Council has submitted a proposal to Furukawa-Schlereth to become permanently affiliated with the human services division of administration and finance, which is headed by Furukawa-Schlereth. Among other things, the proposal would place Staff Council representatives on administrative decision-making committees, enhance professional training and development for staff, establish a Staff Council budget in conjunction with Furukawa-Schlereth's office, and grant the director of human services ex-officio membership status on the Staff Council. The proposal also disavows any involvement in collective bargaining matters under HEERA that would bring the Staff Council into conflict with certified employee organizations.

Minutes of Staff Council meetings indicate that Arminana suggested the Staff Council submit a proposal to affiliate with human services. However, the proposal disavows any involvement in matters related to collective bargaining. As of the hearing in this matter, Furukawa-Schlereth had received the proposal, but he has taken no action on it. Under these circumstances, it is premature to conclude that SSU has dealt with the Staff Council through the council's affiliation with human services. It is worth noting, however, that the Staff Council's formal

affiliation with a department like human services under the terms of the proposal described above is fraught with potential issues under HEERA, even if involvement with collective bargaining matters is disavowed at the outset. As the Board pointed out in Redwoods, an employer who embarks on such a course of conduct does so at its own risk.

In sum, I find that SSU improperly dealt with the Staff Council on a negotiable topic on one topic: extended education course discount. I also have found that SSU has not improperly dealt with the Staff Council in other areas: work schedules, layoffs, and affiliation with human services.

In the context of this record, this does not constitute the kind of pattern or practice that renders the Staff Council an employee organization. A single example of SSU dealing with the Staff Council on a negotiable topic is insufficient to establish a pattern or practice that converts the Staff Council into an employee organization. (See Stoody Co. (1995) 320 NLRB 18 [151 LRRM 1169].)

The next inquiry is whether the Staff Council "exists for the purpose of following such a pattern or practice." (du Pont at p. 894.) On this point, the SSU Staff Council presents a different situation than does the Cal Poly Staff Council. If dealing with SSU was one of the Staff Council's purposes, CSEA has shown very little of it. I have found that SSU dealt with the Staff Council on only one negotiable topic, and evidence of Staff Council involvement in other negotiable areas is limited.

Although the Staff Council has received similar support and assistance as its counterpart on the Cal Poly campus, the totality of the record before me does not permit the conclusion that the Staff Council on the SSU campus exists for the purpose of engaging in a pattern or practice of dealing with SSU in a way that transforms it into an employee organization.

Absent a finding of employee organization status, it is unnecessary to address issues related to domination and support provided the Staff Council by SSU. Domination or support is unlawful only if it involves an employee organization. Based on the foregoing, it is concluded that SSU has not violated section 3571(d).

The Section 3571(f) Allegation

Section 3571(f) makes it unlawful for a higher education employer to

[c]onsult with any academic, professional, or staff advisory group on any matter within the scope of representation for employees who are represented by an exclusive representative, . . . This subdivision is not intended to diminish the prohibition of unfair practices contained in [section 3571(d)]. . . .^[79]

⁷⁹Also, section 3562(r)(5) provides:

. . . All matters within the scope of representation are reserved to the employer and may not be subject to meeting and conferring, provided that nothing herein may be construed to limit the right of the employer to consult with any employees or employee organizations on any matter outside the scope of representation.

Of central importance in resolving allegations that Cal Poly and SSU have violated section 3571(f) is the meaning of the term "consult." Absent case law construing the term consult, CSEA argues, the definition found in the American Heritage College Dictionary, 3rd Edition, 1993, should be adopted here; that is, consult means "to seek advice or information" or "to exchange views; confer." According to CSEA, an employer who engages in discussions, communications, interchanges, or other discourses with a staff advisory group which do not rise to the level of bargaining is guilty of unlawful consultation. Under this definition, CSEA contends, it is clear that CSU has violated section 3571(f) by consulting with the Staff Councils at Cal Poly and SSU on numerous negotiable matters.

Characterizing the prohibition against consultation as a "subspecies" of refusal to bargain, APC argues that CSU has consulted with the Staff Councils in violation of section 3571(f) and, in doing so, bypassed exclusive representatives in violation of section 3571(c). This is true, APC contends, whether the consultation is engaged in routinely or on a single occasion. In APC's view, the existence of section 3571(f) as a separate unfair practice merely reflects the Legislature's recognition that consultive governance was a historical fact in higher education prior to the enactment of HEERA. In light of that tradition, APC continues, explicit treatment of staff advisory groups in section 3571(f) was intended as a form of advice to higher education employers -- upon selection of an exclusive representative,

advisory groups must give way to employee organizations with respect to matters within the scope of representation. It is APC's position here that CSU has not heeded the Legislature's advice.

CSU argues that consultation must be defined in relationship to HEERA as a whole. It is clear, CSU continues, that HEERA is predicated on concepts of open communication and cooperation. Accordingly, the term "consult" must be narrowly defined consistent with these concepts. Under this approach, CSU concludes, it has not violated section 3571(f).

Section 3571(f) has no counterpart in the NLRA, EERA, or the Dills Act. I am aware of no precedent that interprets that section. The meaning of the term "consult," therefore, presents an issue of first impression.

In the absence of precedent interpreting the term "consult," as used in section 3571(f), it is useful to look to the plain meaning of the word as a starting point in interpreting the statute. As CSEA points out, the term consult is defined by the American Heritage College Dictionary as "to seek advice or information," or "to exchange views; confer." Webster's New Collegiate Dictionary similarly defines the term as "to ask the advice of or opinion of" or "to deliberate together." Accordingly, these definitions will be applied here to the extent they are consistent with HEERA's overall scheme.

While the plain meaning of section 3571(f) provides a useful starting point, under established rules of statutory

interpretation, it must be applied in a way that considers HEERA as a whole, and sections relating to similar subjects must be harmonized to the extent possible. (Barstow Unified School District (1997) PERB Decision No. 1138b, p. 22; Dyna-Med, Inc. v. Fair Employment and Housing Commission (1987) 43 Cal.3d 1379, 1387 [241 Cal.Rptr. 67].) There are two competing principles here: the right of exclusive representatives to serve as the sole spokesperson for employees on negotiable matters and the right of higher education employers to communicate with employees. As the Board has observed in a similar context

This not to say that all faculty councils or groups are per se unlawful, or that individual employees cannot speak to their employers about working conditions, including those within the scope of representation. But when the District sets up an organized group of teachers [or other represented employees] to meet at regular intervals on school time to discuss topics of mutual interest, it permits discussion of negotiable subjects at its own risk. [Redwoods at p. 2.]

In addition, it is apparent that the prohibitions in section 3571(d) are different from the prohibition in section 3571(f). The Legislature cast these prohibitions as separate employer unfair practices, and indicated that section 3571(f) is not "intended to diminish the prohibition of unfair practices" in section 3571(d). As discussed above, the threshold question to be asked in section 3571(d) cases is whether an employee organization exists by virtue of an employer's dealings with an employee group through a "bilateral mechanism" which entails a "pattern or practice" of "proposals" accompanied with a

management acceptance or rejection. In comparison, the plain language of section 3571(f) indicates no pattern or practice is required to establish a violation. Consulting with an employee advisory group about "any" matter within the scope of representation violates section 3571(f). It follows that conduct which does not render a staff advisory group an employee organization for section 3571(d) purposes may very well constitute unlawful consultation under section 3571(f).

California Polytechnic State University

Participation on Committees and PACBRA

With Baker's approval, the Staff Council was given representation on several committees which were set up to advise the administration. The role played by the Staff Council on these committees was not one of an observer. Krupp, who served as chairperson of the Staff Council in 1994-95 and continues as an ex-officio member, testified that membership on committees permits the Staff Council to discuss issues under the jurisdiction of the committee that affect staff. Harris similarly testified that it was important for the Staff Council to have input into the committees. And Baker was of the view that the effectiveness of standing committees is directly related to input from the Staff Council.

As discussed above, the jurisdiction of some committees on which the Staff Council had membership involved negotiable matters. According to a stipulation agreed to by the parties, Staff Council representatives sat on the Public Safety Advisory

Committee, whose functions include making "recommendations" regarding a host of matters related to safety. The Staff Council also had a representative on the Safety Risk and Management Committee, which provides "advice" on how to make the campus a safer place; it also selects nominees for the Governor's Employee Safety Awards. The Substance Use and Abuse Advisory Committee is described as a "consulting body on educational and awareness programs" and "considers and advises" on procedures and practices "implementing campus policies." The Status of Women Committee "addresses" issues under its jurisdiction, including employment and sexual harassment matters. Yet another committee deals with diversity and affirmative action. Perhaps the most influential committee on which the Staff Council participates is the Committee on Committees. This committee oversees all committees and has the authority to recommend changes in or elimination of other committees, even those that deal with negotiable matters. It is undisputed that the committees on which the Staff Council enjoyed membership are "advisory" in nature.

The Staff Council also was represented on PACBRA, which has since become the University Budget Advisory Committee. PACBRA was an advisory committee that did not make actual budget cuts. Nonetheless, it was established to address substantive issues that are inextricably intertwined with negotiable matters. It is useful to review Harris' version of her role on PACBRA.

At the time Harris served on PACBRA, Cal Poly was facing a \$6.3 million shortfall as a result of the Governor's budget. She

wrote in the February 1993 issue of the Update that PACBRA's initial task was to develop an "overarching formula" as a framework to discuss budget cuts. At a February 12, 1993, meeting, she informed Staff Council members that PACBRA had decided to "go with an approach that postulated a 5% cut for academic instruction, with remaining divisions and academic support taking a 7.4% cut." According to Harris, PACBRA would next move from a "philosophical approach" to one that considers the impact of budget cuts on each unit, PACBRA will "develop a model for dealing with reductions," and "there is no doubt that the proposed budget cuts will have a profound effect on all constituencies -- faculty, staff, and students."

Harris gathered suggestions about the budget from Staff Council members at a special meeting, but she testified that she did not present these suggestions to PACBRA as proposals. Nonetheless, she said, her role on the committee was to bring concerns of the staff to the committee, engage in discussions or dialogue with members of PACBRA regarding concerns of staff, and gather information from the committee in the areas where budgetary problems might affect staff. It appears that Harris fulfilled this role.

While the record does not indicate the precise nature of any budget cuts, it is evident that PACBRA was established to advise the administration at Cal Poly on potentially severe budget cuts that could affect wages, hours, layoffs, and benefits. Even assuming that any decisions to implement budget cuts fell in the

managerial prerogative category, it is axiomatic that negotiable effects of decisions of this nature are within the scope of representation.

I have found above that Staff Council participation on the Cal Poly committees did not constitute "dealing with" Cal Poly because the evidence did not show that proposals were exchanged under a du Pont standard. However, the standard to determine if section 3571(f) has been violated is not the same. It requires only a showing that Cal Poly consulted with the Staff Council on a negotiable matter.

Based on the foregoing, I find the Staff Council, through its representatives on at least the committees discussed here, advised Cal Poly, provided input, and exchanged views with the administration on negotiable topics.⁸⁰ Indeed, as a member of the Committee on Committees, the Staff Council was in a position to "recommend" changes in other standing committees and/or the abolishment of standing committees, even those that addressed negotiable topics.

⁸⁰As discussed earlier, article 23 of the MOU permits employees to submit recommendations to Cal Poly and request information regarding safety issues. The MOU also gives CSU the right to appoint employees to the safety committee. However, these provisions do not address the issue in this proceeding. They primarily address contract rights of individual employees and CSU's right to appoint employees to the safety committee. The instant case is about the legality of group action and consultation with a staff advisory group organized to represent employees. Even assuming for argument sake that these provisions were applicable here, they would only apply to the safety committee. The Staff Council participates on other committees that deal with negotiable matters.

Therefore, it is concluded that, by permitting the Staff Council to participate on these committees in the manner discussed herein, Cal Poly has consulted with the Staff Council in violation of section 3571(f).⁸¹

Charter Campus Concept

The Staff Council had a representative on the Charter Campus Task Force. Early meetings of the CCTF involved discussions about the charter campus concept and issues that lie at the heart of collective bargaining (e.g., seeking exemptions from HEERA and regulations that cover terms and conditions of employment). An employer who consults with a staff advisory group on such matters does so at its own risk. However, in this instance it does not appear that the discussions rose to the level of consultation. Epstein and Lebens described these meetings as involving only brainstorming discussions. Lebens also said the meetings were an attempt to get participants to "think out of the box."

Further, Baker informed the Labor Council that the fundamental principle of exploring a new charter was to improve the educational experience of students through new and creative ideas. He made it clear that there was no intent to undermine collective bargaining rights or to seek exemption from HEERA or other regulations covering terms and conditions of employment. Baker also suggested a statewide team be established to discuss

⁸¹I have found earlier that the search committees did not involve negotiable matters. Therefore, it is unnecessary to address whether unlawful consultation took place through these committees.

the charter concept with unions. In my view, this evidence does not support the contention that Cal Poly consulted with the Staff Council on a matter within the scope of representation in a way that violates section 3571(f).

Much of the evidence on this topic was directed at the settlement of APC's unfair practice charge and the events that followed. CSEA agreed in the settlement that the Staff Council (as a member of the CCTF) could "conceptually discuss" all issues with the exception that negotiable matters would be referred to the CCEERC, the committee established to discuss negotiable topics.

Although Krupp attended CCEERC meetings, she did so as an observer after a CFA representative agreed with Koob and Lebens that she could do so. Krupp did not engage in follow-up discussions with Cal Poly representatives about the matters discussed. Accordingly, it cannot be concluded that Cal Poly consulted with the Staff Council about negotiable topics in this process setting.

The same is true of the Holiday Closure Committee, a subcommittee of the CCEERC. The question under consideration by the HCC was whether to close the campus between Christmas 1996 and January 1, 1997, an issue that involved a number of negotiable topics. Sally Anderson testified that Krupp was present at meetings when this issue was discussed, but she said Krupp did not participate. And the results of Bowker's staff survey about the impact of closing the campus on working

conditions were presented only to the Academic Senate at Greenwald's request. Therefore, it cannot be concluded that Cal Poly consulted with the Staff Council on the campus closure issue.

Cal Poly Plan

The evidence with respect to Staff Council participation in the CPP leads to the same conclusion. Baker's report to the campus community included staff "productivity" and "accountability" as elements of the CPP. And Zingg's article in the Update said the CPP, if implemented, could result in increased hiring, training, and improvements in facilities and equipment. As noted above, several of these topics are negotiable. Thus, to the extent that Cal Poly consults with the Staff Council through the CPPSC on topics such as these, it violates section 3517(f).

However, the evidence does not indicate that this has occurred. Matters within the scope of representation are referred to the CCEERC. Baker's letter of July 3, 1995, to Epstein and Conway makes it clear that the "Employee Relations Committee has emerged as a very effective forum for discussing employee relations issues in general, and matters pertaining to collective bargaining in particular. The Cal Poly Plan Steering Committee will refer issues pertaining to collective bargaining to the Charter Employee Relations Committee."

Moreover, evidence is lacking that the involvement of the Staff Council went beyond discussions about the CPP to

consultation about matters within the scope of representation. As noted earlier, Baker's meeting with the Staff Council on May 5, 1995, was only a question and answer session. Admittedly, Krupp's follow-up letter to that meeting -- indicating Staff Council interest "in the practical side of the process, what can we do to assist in implementation, and what type of expectations can we have with regard to incentives" -- comes perilously close to crossing the line. However, it is not clear that Baker responded in any improper way. Considered in the context of the record as a whole, Krupp's letter does not support a finding that Cal Poly has consulted with the Staff Council on this matter in violation of section 3571(f).

Much of the evidence at hearing dealt with union membership on the CPPSC and a survey conducted out of the human resources office by Edna Chun. Union membership on the CPPSC and the survey conducted by Chun's office have been discussed above in connection with the section 3571(d) violation and need not be repeated here. Suffice it to say that Baker appointed Strickmeier to the CPPSC from a list provided from then CFA president Zetzsche, without discussing the appointment with members of the Labor Council. Neither the appointment nor the process used met with Labor Council approval. However, this issue primarily involves the appointment of a union representative who was unsatisfactory as far as the Labor Council was concerned. This does not add up to consultation between Cal Poly and the Staff Council.

While the Staff Council took initial steps to conduct an employee survey about the CPP, that survey was terminated after CSEA objected that it included negotiable matters. Chun's office then redesigned the survey and conducted it. If the Staff Council had been permitted to conduct the survey as initially drafted, we would have a different case. But that did not occur. The Staff Council had little or no input into the survey conducted by Chun.

It is concluded, therefore, that neither the evidence surrounding Strickmeier's appointment to the CPPSC nor the employee survey conducted by Chun's office constituted unlawful consultation under section 3571(f).

Academic Calendar

As more fully discussed earlier in this proposed decision, Cal Poly dealt with the Staff Council on the academic calendar. The same conduct that constitutes dealing with under section 3571(d) also constitutes unlawful consulting under section 3571(f).

It is unnecessary at this juncture to reiterate in detail Cal Poly's conduct with respect to the academic calendar. Suffice it to say that the aspects of a decision to adopt an academic calendar are negotiable matters. (See e.g., San Jose.) On behalf of the Staff Council, Bowker participated in a September 13, 1995, meeting to discuss the calendar with Zingg, she made recommendations, discussed the pros and cons of various

proposals, and presented employee feedback she had earlier collected in her capacity as a Staff Council representative.

What resulted from the meeting was an agreement on the academic calendar that encompassed, among other things, identification of Washington's Birthday as an academic work day, and recognition of the need to identify a compensating vacation for staff. The latter issue, according to Zingg's post-meeting memo, was to be presented to employees for input and a recommendation developed.

Based on the foregoing, it is concluded that Cal Poly consulted with the Staff Council about negotiable aspects of an academic calendar in violation of section 3571(f).

Proposed Semester System

As more fully discussed above, in 1994 Baker was considering a switch from the quarter system to the semester system. At his request, the Staff Council surveyed employees to determine their preference and later solicited information from employees about potential positive and negative aspects of a conversion. Krupp responded to Baker with a detailed 21-page summary of employee responses broken down by department. Baker's response was to have Howard-Greene, his assistant, send Krupp a thank you note.

I have found that this conduct did not constitute dealing with the Staff Council under du Pont because Krupp made no proposal, Baker made no substantive response, and Baker was free to do what he wished with the survey results. Therefore, it was found that the survey did not constitute the kind of evidence

that would transform the Staff Council into a statutory employee organization.

However, whether Cal Poly consulted with the Staff Council on this topic is determined under a different standard. While a formal proposal was not made, Baker's request for employee views about a possible conversion to the semester system falls under the section 3571(f) prohibition against consulting with a staff advisory group. Baker's request was not merely a general attempt to solicit information directly from employees. Baker first contacted the Staff Council directly about whether employees preferred the semester system to the quarter system and later asked the council for information about the pros and cons of such a conversion. Nor did Krupp's response merely provide general information. It included detailed information broken down by department with specific feedback on a wide range of negotiable matters, including workload, hours, benefits, and other topics.

It is not dispositive of the issue presented here that the Staff Council made no proposal, Baker provided no substantive response, and no change occurred. What is relevant is that Cal Poly consulted the Staff Council about a topic that unavoidably included a host of negotiable matters. Baker's request was not made in a vacuum. The switch from the quarter system to the semester system was under consideration and presumably the purpose of the request was to use the information and the Staff Council's view (as indicated by Krupp in her November 21, 1995,

cover memo) to assist in reaching a decision. I find that such conduct violates section 3571(f).

Parking

As more fully discussed above, Joe Risser, who was director of public safety in 1993, attended a Staff Council meeting on November 17, 1993, to discuss parking issues. The discussion at that meeting essentially occurred in a question and answer format about parking. Discussions of this type involving employees and an employer representative about a negotiable topic are not prohibited by section 3571(f).

However, as noted earlier, events that occurred after the meeting indicate that Risser and Campbell, via E-mail correspondence, advised Harris on how to pursue a specific proposal related to parking, which is a negotiable topic under HEERA. (See California State University.) The proposal suggested by Risser and Campbell involved one of the topics discussed at the meeting. Providing this type of direct advice or information to a Staff Council representative on the heels of a Staff Council meeting where employee concerns regarding parking issues were discussed in detail constitutes the kind of consultation prohibited by section 3571(f).

Emergency Response Plan

After a fire occurred near the Cal Poly campus, Risser received numerous suggestions from Krupp regarding procedures to be followed in future emergencies. Risser formally acknowledged their receipt. Krupp thanked him in writing and said the Staff

Council feels it can help in this type of situation by giving employees an opportunity and a means to communicate their concerns.

Against this background, Risser attended a Staff Council meeting on October 11, 1994. He participated in an open discussion about emergency safety procedures and shared information on the topic. In a memo sent the same day, Risser acknowledged to Krupp that he had received "excellent suggestions" and at least one suggestion (Doepel's suggestion concerning a procedure to notify staff of relevant information during an emergency) would be developed further. Risser also testified that he made a presentation at a Staff Council meeting on January 10, 1995, and told the council that their suggestions would be considered in updating campus policy.

An emergency response procedure to be used during a fire is a matter that falls within the general category of employee safety, a negotiable topic. (See San Mateo at pp. 82-84.) Thus, if it is determined that Risser consulted with the Staff Council about this matter, he will have violated section 3571(f).

I have found above that Risser's conduct involved an ongoing bilateral mechanism, accompanied by proposals, that constitutes dealing with the Staff Council under du pont. For the same reasons, I conclude this kind of conduct violates the prohibition against consulting with staff advisory groups under section 3571(f). Risser's interaction with the Staff Council on emergency procedures went beyond permissible grounds and crossed

the line into the area of consultation. As a management official with responsibility for safety measures, he received advice in the form of suggestions through the Staff Council, accepted some of the advice, and later said future suggestions would be considered in updating campus policy.⁸²

Conferences and Workshops

The Fall Conference is similar to an orientation session. It is designed to welcome faculty and staff at the beginning of a new year, inform employees of policies and procedures, and discuss issues facing Cal Poly. The Staff Council, along with the Labor Council, has been permitted to make a presentation at Fall Conferences since 1994. In addition, in 1994 the Staff Council sponsored a goals workshop. According to Sally Anderson, at least one aspect of the workshop was to promote the Staff Council and explore ways to increase its voice as the representative of staff. In comparison, Krupp testified that the workshop was a brainstorming session about Staff Council goals for the upcoming year, and how to achieve those goals.

The record contains no evidence that Cal Poly used either the Fall Conferences or the goals workshop described above as a forum to consult with the Staff Council on any matter within the scope of representation. Therefore, this allegation is dismissed.

⁸²As discussed above, the MOU's provision permitting Cal Poly to receive input from individual employees, does not alter this conclusion. While the MOU permits employee input, it does not address the broader issue of consultation with a staff advisory group.

In sum, I have found that Cal Poly has consulted with the Staff Council in the following areas: Committee on Committees, standing committees, PACBRA, academic calendar, proposed semester system, parking, and emergency response procedure. This conduct violates section 3571(f). I have also found that Cal Poly has not consulted with the Staff Council in the following areas: search committees, charter campus (including Staff Council participation at CCEERC meetings and the HCC), CPP (including the CPPSC meetings and the survey conducted by the human resources office), Fall Conferences, and general workshops.

Sonoma State University

Extended Education Course Discount

Staff Council representative Sue Foley participated in a meeting with the dean of extended education, David Walls, as a "factfinding mission" to secure "better access" to extended education courses for staff. Foley entered the meeting looking for a benefit for staff with respect to extended education courses. During the meeting, the 20 percent discount was discussed and Foley secured an agreement that it would be extended to staff.

I have found that the meeting between Foley and Walls constituted an example of conduct where SSU dealt with the Staff Council in a manner that tends to support a finding of employee organization status. For the same reasons, I find that SSU consulted with the Staff Council on this matter.

The meeting between Foley and Walls went beyond a mere discussion about a course discount. Foley was openly exploring the possibility of better access to extended education courses for employees and Walls responded with an option of giving staff employees the same discount that extended education employees receive. Because this matter involves a negotiable subject (see San Mateo at pp. 84-85), it is concluded that SSU consulted with the Staff Council in violation of section 3571(f).⁸³

Work Schedules

As noted earlier, although work schedules relate to hours and are therefore negotiable under HEERA, the record evidence on this topic is sketchy at best. Evidence relied on by CSEA to suggest that Arminana communicated in 1995 with Staff Council representatives about topics that impact employee hours of employment is largely based on Staff Council minutes and key witnesses (Arminana, Tichava, and Mattiassi) were not called to testify. And, as discussed earlier, Foley's testimony regarding Staff Council involvement in this area adds very little. Taken together, Foley's testimony and the minutes of Staff Council meetings do not support a finding that SSU consulted with the Staff Council.

⁸³The evidence indicates that Furukawa-Schlereth had knowledge of a Staff Council proposals regarding training and development, and minutes of Staff Council meetings indicate that he engaged in discussions with Staff Council representatives on this topic. However, because it is clear that an agreement for a staff discount for extended education courses was struck with Walls, a management official, it is unnecessary to address Furukawa-Schlereth's participation in this matter.

In addition, evidence concerning discussions between Furukawa-Schlereth and Arminana about the academic calendar and moving graduation day to a Saturday does not indicate SSU consulted with the Staff Council on these issues. It appears that Furukawa-Schlereth advised Arminana without the involvement of the Staff Council.

Based on the foregoing, the argument that SSU consulted with the Staff Council on work schedules is rejected.

Layoffs

As more fully discussed above, Furukawa-Schlereth conducted two meetings in March 1993 to discuss budget cuts and potential layoffs. Effects of layoffs are negotiable. (Newman-Crows Landing.) However, the meetings were called to inform the various representatives of SSU's plan and to discuss it, not to negotiate about it. In attendance at both meetings were Labor Council representatives, including then CSEA president Richard Martinez. Sue Foley, Staff Council representative, was invited by Furukawa-Schlereth as a "courtesy" and because she could assist in distributing information about the meetings to staff.

The meetings were not negotiation sessions. There were no proposals exchanged and no agreements executed. Nor is there evidence that Foley offered advice or participated in any significant way. Although the meetings involved negotiable topics, even Martinez characterized them as "essentially a sounding board for us to start talking to one another about the types of things we thought would be issues."

As noted earlier, discussions between an employer and employees involving important matters does not automatically transform the group into an employee organization. This is so even when negotiable matters are at issue. It is similarly true that meetings such as the ones that took place here, where a Staff Council representative plays a passive role and offers little or no advice or input, do not rise to the level of consultation.

It bears repeating, however, that an employer involves a staff advisory group in such meetings at its own risk. If Foley had played an active role in the meeting we would have a different case. But that did not occur.

In this instance, the evidence does not support a finding that SSU crossed the line into unlawful consultation with the Staff Council. The meetings were held to share information rather than to negotiate, and Foley did not play an active role. While effects of layoff were discussed, such a discussion does not in itself transform the meetings into unlawful consultation.

Staff Council Affiliation with Human Services

Pending before Furukawa-Schlereth is a proposal from the Staff Council to become permanently affiliated with the human services division of a department under his authority. Features of the proposal include placing staff representatives on administrative decision-making committees, enhancing professional training and development for staff, establishing a Staff Council budget in conjunction with Furukawa-Schlereth's office, and

granting the director of human services ex-officio membership status on the Staff Council. The proposal explicitly disavows involvement in collective bargaining matters under HEERA.

According to minutes of a Staff Council meeting, the council submitted the proposal at Arminana's suggestion. However, the proposal disavows any involvement in matters related to collective bargaining, and Furukawa-Schlereth has taken no action on it. Thus, it is premature to conclude that SSU actually consulted with the Staff Council on a negotiable topic by virtue of the council's affiliation with human services. It is worth repeating, however, that a formal affiliation of the type described here is fraught with potential unfair practices under HEERA, even if involvement with collective bargaining matters is disavowed at the outset. As the Board pointed out in Redwoods, an employer who embarks on such a course of conduct does so at its own risk.

In sum, I have found that SSU has consulted with the Staff Council on one topic: course discount for employees in extended education courses. This conduct violates section 3571(f). I have also found that SSU has not consulted with the Staff Council on three topics: work schedules, layoffs, and affiliation with human services.

REMEDY

The Board in section 3563.3 is given:

. . . the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not

limited to, the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.

It has been found that Cal Poly and SSU have violated section 3571(f) by consulting with the Staff Council about matters within the scope or representation. This conduct also violates section 3571(a) because it interferes with the right of employees to be represented by their chosen exclusive representative. The same conduct violates section 3571(b) because it interferes with an exclusive representative's role in representing employees in bargaining units where it holds exclusive status. Therefore, it is appropriate to order Cal Poly and SSU to cease and desist from consulting with the Staff Council on their respective campuses.

It has also been found that Cal Poly unlawfully dealt with and supported the Staff Council, in violation of section 3571(d). Such conduct also violates section 3571(a) and (b). (Redwoods; Oak Grove.) Therefore, it is appropriate to order Cal Poly to cease and desist from such activity in the future.⁸⁴

CSEA requests as an additional remedy an order disestablishing the Staff Councils or, alternatively, an order directing Cal Poly and SSU to cease and desist from providing

⁸⁴Having reached these conclusions, it is unnecessary to address CSEA's and APC's argument that unlawful consultation also constitutes a derivative violation of the duty to bargain, in violation of section 3571(c). It is noted that, in a similar context, PERB has not found a derivative section 3543.5(c) violation even after concluding that the employer has unlawfully dealt with an employee group in violation of EERA section 3543.5(d). (See Ventura; Redwoods.)

financial and other support to the councils. A disestablishment remedy typically is ordered after an employee group has been found to be a statutory employee organization whose formation or operation is dominated and supported by an employer. (See Ventura; Redwoods.)

It has been found that the Staff Council at SSU is not an employee organization under HEERA. Therefore, an order disestablishing the Staff Council and directing SSU to cease and desist from providing support to its Staff Council will not be imposed here.

It has been found that the Staff Council at Cal Poly is an employee organization. However, the disestablishment remedy for a section 3571(d) violation would not effectuate the purposes of HEERA. The Staff Council is also a staff advisory group. Unlike other PERB-administered statutes, it is apparent that HEERA contemplates a role for staff advisory groups in its statutory scheme. Implicit in section 3571(f) is an employer option to consult with a staff advisory group, provided it does not do so regarding matters within the scope of representation. Expressly stated in section 3562(r)(5) is the authority to consult with "any employees" about matters outside the scope of representation. Thus, the limitation under HEERA is that employers not consult with staff advisory groups about negotiable topics.

A cease and desist order will remedy the unlawful conduct, while permitting the Staff Council to continue in accord with the

limitations imposed by HEERA. This is not to say that a staff advisory group that deals with a higher education employer on negotiable matters in violation of section 3571(d) may never be disestablished. On this record, however, I decline to impose such a remedy.

The alternative remedy sought by CSEA will effectuate the purposes of HEERA. At the heart of HEERA lies the principle of exclusive representation. It is the legislative intent that HEERA establish a

uniform basis for recognizing the right of the employees of these systems to full freedom of association, self organization, and designation of representatives of their own choosing for the purpose of representation in their employment relationships with their employers and to select one of these organizations as their exclusive representative for the purpose of meeting and conferring. [Section 3560(e).]

After an employee organization is certified as an exclusive representative, an employer who deals with and supports a group of employees that has been adjudged an employee organization undermines the principle of exclusivity. Therefore, Cal Poly shall be ordered to cease and desist from dealing with the Staff Council about matters within the scope of representation and to cease and desist from providing any support or assistance, financial or otherwise, to the Staff Council.

This order places the Staff Council, Cal Poly, and CSEA in their appropriate positions as contemplated by HEERA. The Staff Council will remain in existence and Cal Poly may consult with it about matters outside the scope of representation. CSEA will

continue as the exclusive representative of employees in bargaining units 2, 5, 7, and 9 for purposes of meeting and conferring with Cal Poly.

It is also appropriate that CSU be required to post a notice incorporating the terms of the Order at its Cal Poly and SSU campuses. The Notice should be subscribed by an authorized agent of Cal Poly and SSU, indicating that it will comply with the terms thereof. The Notice shall not be reduced in size and reasonable effort will be taken to insure that it is not altered, covered by any material or defaced and will be replaced if necessary. Posting such a notice will inform employees that the CSU and its Cal Poly and SSU campuses have acted in an unlawful manner and are being required to cease and desist from this activity and will comply with the order. It effectuates the purposes of HEERA that employees be informed of the resolution of the controversy and will announce CSU's readiness to comply with the ordered remedy. (Davis Unified School District, et al. (1980) PERB Decision No. 116; see Placerville Union School District (1978) PERB Decision No. 69.)

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, and pursuant to the Higher Education Employer Employee Relations Act (Act), Government Code section 3563.3, it is hereby ordered that the California State University and its California Polytechnic State University, San

Luis Obispo (San Luis Obispo), and Sonoma State University (Sonoma) campuses and their representatives shall:

A. CEASE AND DESIST FROM:

1. At San Luis Obispo, dealing with the Staff Council about matters within the scope of representation, contributing financial and other support to the Staff Council, or in any way engaging in conduct which tends to encourage employees to join any employee organization in preference to another.

2. At San Luis Obispo and Sonoma, consulting with the Staff Council on matters within the scope of representation.

3. At San Luis Obispo and Sonoma, interfering with the exercise of employee rights to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters within the scope of representation.

4. At San Luis Obispo and Sonoma, interfering with the right of the exclusive representative California State Employees Association, SEIU Local 1000, to represent employees in all matters within the scope of representation.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE ACT:

1. Within ten (10) workdays of service of a final decision in this matter, post at all sites and all other work locations where notices to employees are customarily placed on the San Luis Obispo and Sonoma campuses, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the campuses indicating that the campuses

will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that the Notice is not reduced in size, altered, defaced or covered by any other material.

2. Within five (5) workdays of service of a final decision in this matter, notify the San Francisco Regional Director of the Public Employment Relations Board, in writing, of the steps the employer has taken to comply with the terms of this Order. Continue to report in writing to the Regional Director periodically thereafter as directed. All reports to the Regional Director shall be served concurrently on the Charging Party.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself at the headquarters office in Sacramento within 20 days of service of this Decision. In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (See Cal. Code Regs., tit. 8, sec. 32300.) A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing ". . . or when sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing" (See Cal. Code Regs., tit. 8, sec. 32135; Code Civ. Proc., sec. 1013 shall apply.) Any

statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, secs. 32300, 32305 and 32140.)

Fred D'Orazio

FRED D'ORAZIO
Administrative Law Judge

APPENDIX



NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

After a hearing in Unfair Practice Case No. LA-CE-370-H, California State Employees Association v. Trustees of the California State University, in which all parties had the right to participate, it has been found that the Trustees of the California State University (University) violated the Higher Education Employer-Employee Relations Act, Government Code section 3571(f), (d), (b), and (a).

As a result of this conduct, we have been ordered to post this Notice and we will:

CEASE AND DESIST FROM:

1. At San Luis Obispo, dealing with the Staff Council about matters within the scope of representation, contributing financial and other support to the Staff Council, or in any way engaging in conduct which tends to encourage employees to join any employee organization in preference to another.
2. At San Luis Obispo and Sonoma, consulting with the Staff Council on matters within the scope of representation.
3. At San Luis Obispo and Sonoma, interfering with the exercise of employee rights to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters within the scope of representation.
4. At San Luis Obispo and Sonoma, interfering with the right of the exclusive representative California State Employees Association, SEIU Local 1000, to represent employees in all matters within the scope of representation.

Date: _____

TRUSTEES OF THE CALIFORNIA
STATE UNIVERSITY

By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED, OR COVERED WITH ANY OTHER MATERIAL.

PROOF OF SERVICE BY MAIL
C.C.P. 1013a

I declare that I am a resident of or employed in the County of Sacramento, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Public Employment Relations Board 1031 18th Street, Sacramento, California, 95814-4174. I am readily familiar with the ordinary practice of the business in collecting, processing and depositing correspondence in the United States Postal Service and that the correspondence will be deposited the same day with postage thereon fully prepaid.

On May 22, 1998, I served the attached PERB Decision No. HO-U-680-H, Trustees of the California State University, Case No. LA-CE-370-H on the parties listed below by placing a true copy thereof enclosed in a sealed envelope for collection and mailing in the United States Postal Service following ordinary business practices at Sacramento, California addressed as follows:

William Knight, University Counsel
California State University
400 Golden Shore, Suite 300
Long Beach, CA 90802

Carlos Cordova, University Counsel
California Polytechnic State University
San Luis Obispo, CA 93407

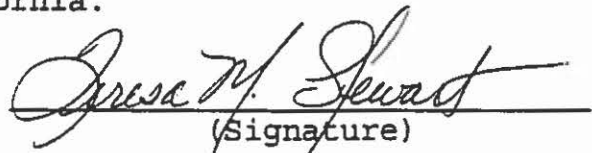
Howard Schwartz
Teven Laxer
California State Employees Association
1108 O Street
Sacramento, CA 95814

Edward Purcell, Labor Consultant
Academic Professionals of California
419 Carroll Canal
Venice, CA 90291

Glenn Rothner, Attorney
Rothner, Segall, Bahan and Greenstone
200 E. Del Mar Blvd., Suite 200
Pasadena, CA 91105

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on May 22, 1998, at Sacramento, California.

Teresa M. Stewart
(Type or print name)


(Signature)

